123-335

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 587. ~~306~~ 36

THE UNITED STATES, APPELLANTS,

vs.

MATHILDE DE MORANT ET AL., HEIRS OF CERILO DE MORANT; H. CLEMENT MILLANDON ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED SEPTEMBER 19, 1884.

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INDEX.

	Original.	Print.
Caption	1	1
Petition	2	1
Exhibit A, diagram	9	4
Exhibit B, diagram	10	4
Spanish papers and translations	12	4
Answer	46	19
Stipulation as to facts	49	20
Order of reference	52	20
Interrogatories	55	21
Cross-interrogatories	57	21
Surveyor's certificate and plat	59	22
Testimony of witnesses	61	22
Decree	66	24
Order as to appeal	69	25
Clerk's certificate	70	25

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1 Pleas in the United States district court in and for the northern district of Florida, at Pensacola, wherein Matilda de Morant et al. are complainants and the United States are defendants.

Be it remembered that on the 22d day of November, A. D. 1869, came the petitioners, by S. R. Mallory, A. E. Maxwell, and E. A. Perry, esqs., their attorneys in the case aforesaid, and filed in the clerk's office of the United States their petition in the words and figures following:

2 District court of the United States, northern district of Florida.

To the Hon. Philip Frazer, judge:

The petition of Mathilde de Morant, widow of Bienvenue, and one of the heirs of Cerilo de Morant, in behalf of herself and of all other heirs of the said Cerilo de Morant—of H. Clement Millandon, Benjamin Laurent Millandon, Edmond Burthe, Emanuel Burthe, Frederick George Burthe, Andre Burthe, Margaret Burthe, Madaline Millandon, Genevive Millandon (the said Madaline and Genevive being minors and wards of their tutor, Adolphe Yamboury), Lizzie Mills, Marie Alice Abot, wife of said Adolphe Yamboury, heirs of Laurant Millandon and of Clementine de Morant, widow of Pichot, and one of the heirs of Louis Docminel de Morant, in behalf of herself and of all other heirs of the said Louis Docminel de Morant, respectfully makes known unto this honorable court:

First. The said Cirilo de Morant, Laurent Millandon, and Louis Docminel de Morant are dead, and the heirs aforesaid reside beyond the jurisdiction of the State of Florida.

Second. That on the eight' day of October, A. D. one thousand eight hundred and seventeen, the then King of Spain, in the exercise of
3 supreme dominion over Florida, by and through Don Jose Masot, then the governor and subdelagate of the Real Hacienda, in and for West Florida, granted unto the aforesaid Cerilo de Morant, his heirs and assigns, then a subject of Spain, a certain tract of land, containing sixteen hundred superficial arpents, situated northwest of the city of Pensacola, in West Florida, at the distance of about twelve miles and a half, bounded northwardly by lands previously granted to Don Emanuel Gonzalez and by public lands, eastwardly and westwardly by public lands, and southwardly by lands granted to Desiderio Quina; that on the first and second days of March, A. D. one thousand eight hundred and eighteen, the said land was surveyed for Cirilo de Morant by Don Pedro Reggio, the deputy surveyor of the King of Spain in and for West Florida, and who, on the sixth day of said March, delivered to the proper authorities his certificate and his plan or map of the said survey, a copy of which is hereunto annexed (A).

That thereupon the said grantee proceeded to clear, occupy, settle, and cultivate the said land, all of which will more particularly appear by an inspections of the original grant and other proofs to be by your petitioners presented, and a copy of which grant is hereunto annexed marked A.

4 Third. And your petitioners further say that on the twentieth day of January, A. D. one thousand eight hundred and eighteen, the said King of Spain, by and through the aforesaid governor and sub-

delagate, Don José Masot, did grant unto Desiderio Quina, a subject of Spain, eight hundred arpents, situated about eleven miles northwest of Pensacola, in West Florida, which grant of land was on the second and third days of March, A. D. one thousand eight hundred and eighteen, surveyed by the deputy surveyor aforesaid, for and on behalf of the said grantee, and the said surveyor duly made and delivered his certificate and plat or plan of the said survey, and the said land was by the grantee aforesaid duly cleared, occupied, settled, and cultivated, and a copy of said grant is annexed, Exhibit B.

Fourth. And your petitioners further represent that the said grantee Desederio Quina, did on the twenty-ninth day of October, A. D. one thousand eight hundred and eighteen, for a valid consideration, sell, grant, and convey all his right, title, and interest in and to the said granted eight hundred arpents of land unto the said Cirilo de Morant, his heirs and assigns, whereby the said Cirilo de Morant became pos'essor of both the said grants of land (see 6).

5 Fifth. And your petitioner further say that thereafter, on the fourteenth day of June, A. D. one thousand eight hundred and twenty one, the said Cirilo de Morant sold and conveyed three undivided fourth parts of the first recited grant of land (of 1,600 arpents) as follows, to wit, one undivided fourth part to Laurant Millandon and his heirs and assigns; one undivided fourth part unto Louis Docmenil Morant and his heirs and assigns, and one undivided fourth part unto John Chabau, his heirs and assigns (see 7), and that on the ninth day of November, A. D. one thousand eight hundred and eighteen, the said Cirilo de Morant sold and conveyed three undivided fourth parts of the land in the said grant to Quina, recited as follows, to wit, one undivided fourth part of the said 800 arpents unto Laurant Millandon, his heirs and assigns; one undivided fourth part unto Louis Docmenil de Morant, his heirs and assigns, and one undivided fourth part unto John Chabau, his heirs and assigns (see 8), whereby the said Cirilo de Morant, Louis Docmeniel de Morant, Laurent Millandon, and John Chabeau, their heirs and assigns, became each entitled to and pos'essed of one undivided fourth part of the twenty-four hundred arpents of land recited and described in both of the aforesaid grants.

6 Sixth. And your petitioners further say that the said Laurent Millandon thereafter, to wit, on the seventh day of August, A. D. one thousand eight hundred and thirty-five, purchased the aforesaid undivided interest and estate of the said John Chabau in both of the aforesaid grants of land (see 9), whereby he, the said Millandon, became the owner of the one undivided half of the lands in both the said grants recited.

Seventh. And the heirs of the said Cerilo de Morant, your petitioners aforesaid, allege that herein they petition as well for and in behalf of the interests of the heirs of the said Louis Docmeniel de Morant, and those of the said Laurent Millandon, as for themselves and all the heirs of the said Cerilo de Morant, in and to the said lands, and they invoke the equity, the relief, and the decree of this hon. court accordingly.

Eight. And your petitioners further say that the said grants of land were made by competent authority, that their conditions have been fulfilled, that they are entitled to have the grants confirmed, and they therefore pray

the interposition of this honorable court in the premises, that it will, upon the proofs to be by them exhibited in this cause, pronounce the said grants and the claims of your petitioners valid, and grant unto them such other and further relief as unto equity may belong, and they will ever pray.

7 MRS. VEUVE CYRILL BIENVENUE,
(born Mathilde Morant,)
Per CYRILL BIENVENUE, *Agent.*

[ORDINARY MARK OF WIDOW CIRIL + BIENVENUE.]

EM. BURTHE,
Heir of Cirilo de Morant & Louis Docmeniel de Morant.
ALEX. BIENVENUE.

UNITED STATES COMMISSIONER OFFICE.

Before me, the undersigned commissioner, this day personally appeared Edmond Burthe, one of the heirs of the late Laurent Millandon, and one of the petitioners, well known and identified, who, after being duly sworn, declares that all the facts set forth in the above petition are true, and has signed his name thereto in my presence.

New Orleans, 2 November, 1869.

D. AUGUSTIN,
U. S. Commissioner for La.

Before me, the undersigned United States commissioner, this day personally appeared Cyril Bienvenue, the agent of his mother, one of the above petitioners, Mrs. Widow Cyril Bienvenue, well known and identified, who, after being duly sworn, declares that the facts set forth in the above petition are true, and has signed the above in my presence.

New Orleans, the 10 November, 1869.

D. AUGUSTIN,
U. S. Commissioner.

8 UNITED STATES COMMISSIONER,
OFFICE FOR THE DISTRICT OF LA.

Before me, the undersigned U. S. commissioner, this day personally appeared Mrs. Mathilde de Morant, widow of the late Cyrill Bienvenue, one of the heirs of Cyril de Morant, and one of the above petitioners, personally known to me and identified, who after being duly sworn and having signed in my presence the above petition (already signed by her son as her agent) declares that all the facts set forth in the above petition are true. Widow Cyril Bienvenue being disabled by sickness affixed her mark in my presence.

New Orleans, 15 November, 1869.

D. AUGUSTIN,
U. S. Commissioner.

Before me, the undersigned United States commissioner for the district of Louisiana, this day personally appeared Alexandre Bievenue, residing in the city of New Orleans, well known and identified, one of the heirs of Louis Docmeniel de Morant mentioned in the above petition,

who, after being duly sworn, and having in my presence signed the above petition, declares that all the facts set forth in the above petition are true.

In faith whereof I have hereunto affixed my hand and seal of office. New Orleans, 15 November, 1869.

D. AUGUSTIN,
U. S. Commissioner.

MALLORY & MAXWELL & E. A. PERRY,
Solicitors.

[Here follows 2 diagrams, 9 and 10, and 11.]

TESTIMONIO.

12 S^{or} Gob^{r} y subdelegado de Real Hacienda D^{n} Desiderrio Quina, vecino de esta plasa, con el respeto que deve a V. S. dice: Que habiendo servido a S. M. el espacio de quinc anos, hasta degan al empleo de sargento Prim^{o} en el Regim^{to} Infant^{a} de la Lins^{d}, en el que se licencio para casarse, y teniendo en la actualidad una familia bastande crecida, y con proporcion de establecer tierras, tanto en el fomento de una bagueria, como en hacienda de cultura, y sabiendo que se concidero gratuitas en esta Pro^{d} las q^{e} se hallan realengas, a los que como el suplicante pruden hacerlas valer de un modo ventajoso. A V. S. sup^{ca} se serva tener a bien concederle ocho cientos arpanes que escojera adequados el empleo a que se propone, en las que se hallan realingas, al tiempo de verificar el apeo: Gracia que espera merecer de la justicia y veridad de V. S. Pansacola 3 de Diciembre de 1817. Informe el Agrimensor nombrado, si es realenga y esta vacante la tierra que solicita, y siendolo pare a la vista del S^{or} Fiscal de R^{l} Hacienda, Masot, Domingo Sausa, Jose Cevallos. En el mismo dia lo hicimos saver a Desiderio Quina admos fé, Sausa, Cevallos. Seguidemente ontevamos al ten^{te} D^{n} Pedro Riggo; damos fé, Domingo Sausa, Jose Cevallos, S^{or} Comandante y subdelegado de R^{l} Haciendo. El promivente no espresa el parage en donde solicita la merced de ocho cientos arpanes de tierra, y dice que los escopera de las realengas y vacantes. Por lo que resolvera V. S. loq^{e} sio de su superior agrado.

Pensacola 18 de Diciembre de 1817.

13 PEDRO REGGIO.

PENSACOLA *y* 7 *Diciembre* 20 *de* 1817.

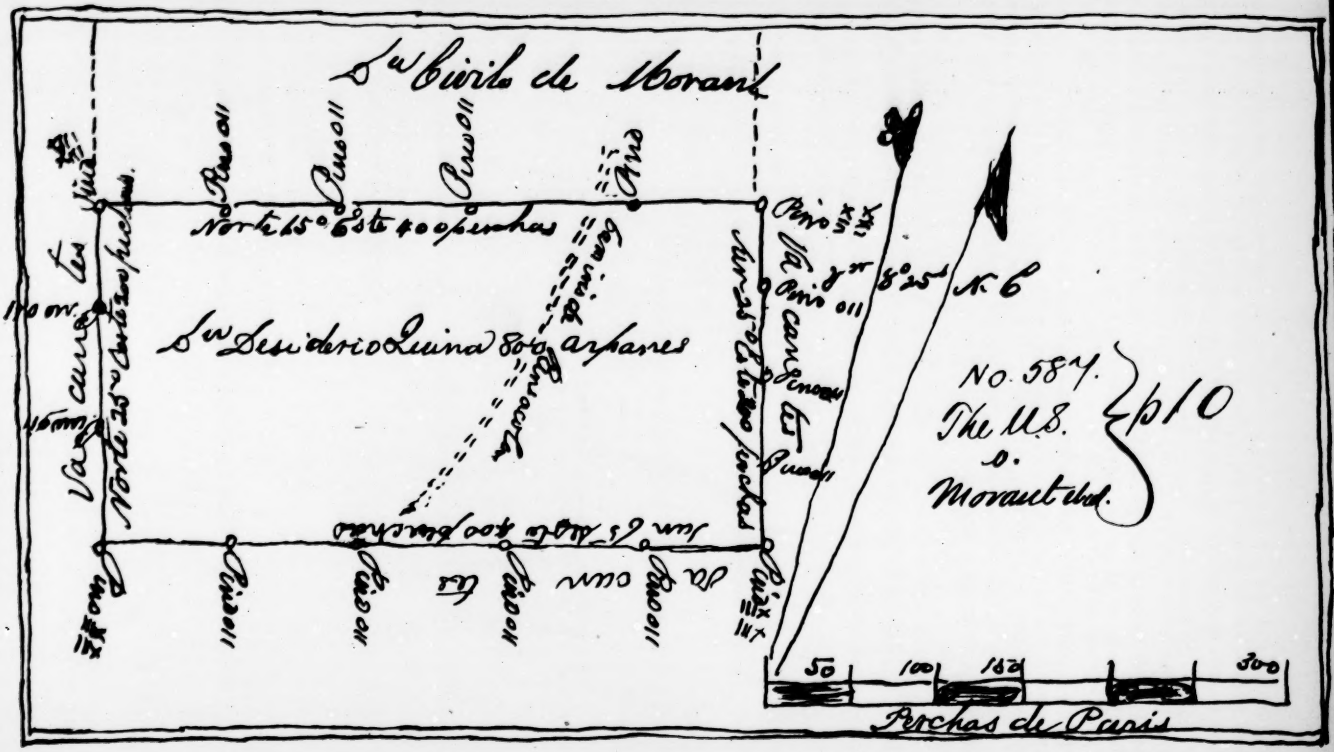
Respecto a quedyio a eliccion del agrimensor escojer las tierras como solicita el suplicante, pondra a este en pocesion, cindando que lo que eligiese sea realenga.

MASOT,
DOMINGO SAUSA,
JOSE CEVALLOS.

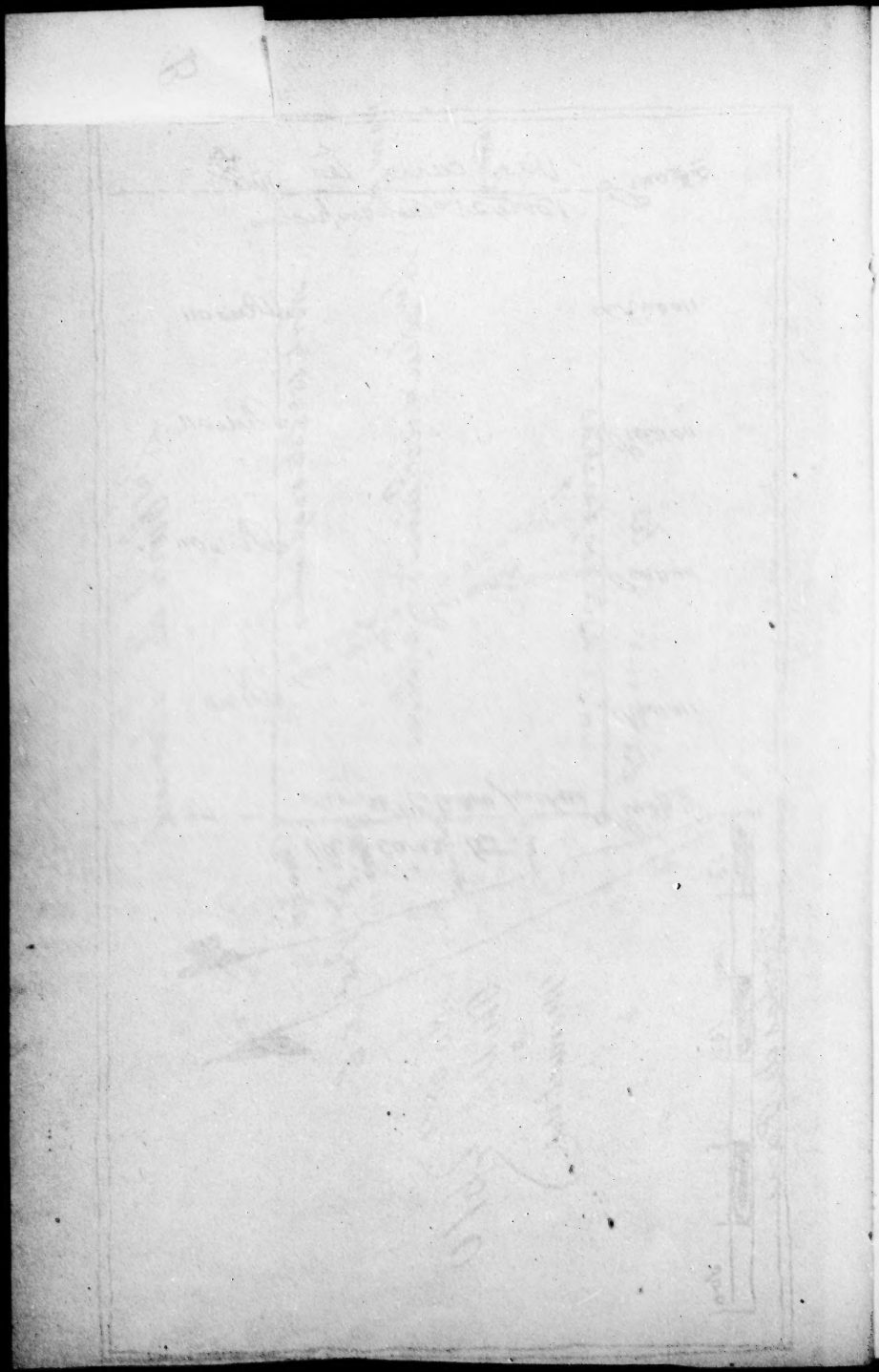
S^{or} Governador y Subdelegado, D^{n} Desiderio Quina, vecino de esta Plasa, con la veneracion que debe a V. S. dice: Que habiendo encontrado la tierra que le podria convenir a las doce millas al N. O. de esta Poblacion, por la parte del S. E. de la que tiene establicida D^{n} Manuel Gonzalez sup^{ca} a V.

Varias curvas
Norte 25° Oeste 200 pies
Rumbo
Rumbo
Rumbo

B



No. 584.
The U.S.
v.
Morant et al.
p10



S. tenga a bien finar en dho. parage la gracia de concesion que tiene obtenido de V. S. que sera gracia que merecera de la justif^{on} de V. S.

Pansacola 15 de Enero de 1818.

DESIDERIO QUINA.

Pansacola 20 de Enero de 1818.
Como lo fide resultando su realenga.

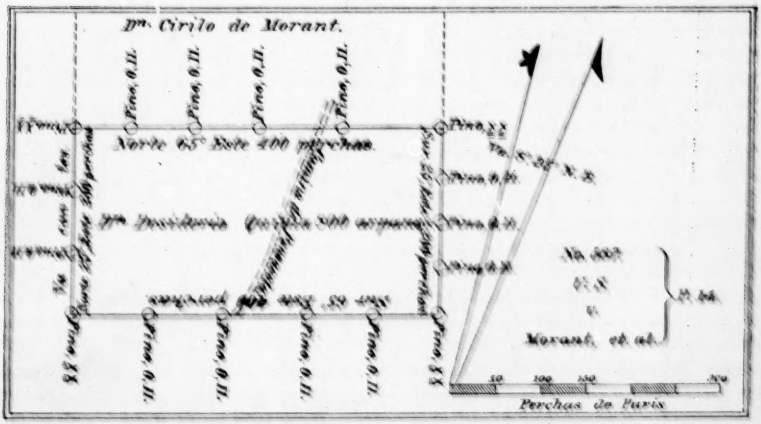
MASOT.

Es conforme a sus original a que venieto y a pedimento de parte doy el presente en Pensacola a primero de Mayo de mil ochocientos diez y ocho.

JOSE MASOT.
DOM'O SAUSA.
JOSE CEVALLOS.

Rejected by the commissioner of land claims.

JOSEPH E. CARO,
Secretary to the Board.



14 D^{on} Pedro Reiggo Teniente del Regimento de Infant^{a} de la Louisianna diputado agrimensor para la Provincia de la Florida occidental por D^{n}. Vicente Leb^{n} Pintado Capitan de Ynfanteria agrimensor general y Real de la mismo.

Certificio: Que consequente a los decretos que antecede del S^{or} D^{on} Jose Masot, Comandante y subd^{e} de Real hacienda de esta provincia de veinte de Diciembre del ano proximo pasado y viente de Enero de los Corientos, deslinde medi acoti el dia tres del presente mes en presencia y para D^{n} Desiderio Quina unparo de tierra de ocho ciento arpenes planos medidos a la percha de paris de dies y ocho pies lineales de la misma ciudad, contando cien perchas quadradas de superficie plana por arpan de aria segun costumbre geodetica de esta provincia cuyo terreno se halla situado a onse millas al N. O. de esta Poblacion de Pensacola, lindando por la parte del norte con tierras medidas pora D^{n} Cirilo de Morant y por la del este, sur y Oiste con tierras vacantes del Real Domino como mas claramente represanta el plano que antecede en el que v^{a} figurado el terreno, anotoda las demenciones

de sus lados en perchas lineales de Paris las direcciones de los limites segun la bruscula la declinacion N. E. de esta los arboles que sirven de
15 linderos y los demas terminos cotor y confines naturales y artificiales y para que conste doy la presente en Pensacola a seis de Marso del ano de mil ocho cientos dies y ocho.

PEDRO REIGGIO.

Rejected by the commissioners of land claims for West Florida.

JOSEPH E. CARO,
Secretary.

Notá Que en 29 de Oct^{e} de 1818 se paso venta a favor de D. Cirilo de Morant.

Sepase por la presente escertiera come yo D^{n} Desiderio Quina, vecino de esta Plasa Otorgo que vendo realmente y con expecto a D^{on} Cerilo de Morant residenten esta Plasa un Pano de tierra de ocho ciento arpanes situados a las onse millas al N. O. de esta poblacien lindanto por la parte del norte con tierras medidas p^{d} D. Cirilo de Morant y por la de Este, sur y Oeste con tierras del R^{l} Dominio como mas clarantes lo manifeista el plano figuratio formado p^{r} el agrimensor Disputado Teniente D. Pedro Reiggio, y son los mismos que une fueron concedidos, gratiuamente p^{r} el s^{n} D^{no} Jose Masot Coronel del R^{l} cuerpo de Artill^{a}, Governador y subd^{o} de R^{l} Hax^{d} qe fue de esta Provincia suftra viente de Deciembrie del anos p^{o} p^{o} de mil ocho cientos dies y siete cuyos titulos entrego p^{d} comt^{d} en este archivo, y son los mismo que le vendo libre de gravamen e y Potica, la q^{e} no consta
16 tener alguna, en precio de quatrocientos pesos que del comprador he viciodo do contado y por no ser de presente la entrega, otorgo formal recivo y carta de payo en forma mediante la cual me quito y desapodero del derechedo propriédad posecin, vtit, Dominio y senorio que a los citados arpenes de tierra havia y tiena y todo to cedo renuncio y transparo en favor del comprador u en quien sudro y causa hubiere para q^{e} como lexitimo dueno los posea, cambri, vanda o enagene a su voluntad en virtud de esta escritura q^{e} a sa favor otorgo que ha de ser visto haver adquirido su posecion in q^{e} necesite de otra prueba la q^{e} la velito y me obligo a la ericion de esta venta en toda forma de d^{ro} con mis vienes presates y futuros com poderio a las justicias p^{d} que a su complimento se me apremie, y estando presente yo el citado D. Cirilo de Morant al otorgamiento de esto documento to acepto a mi favor y p^{r} el recido comprado el pano de tierra en el precio que me ha vendido del q^{e} me doy p^{r} entregardo a mi voluntad. En cuyo testimonio es tha. la presente en Pensacola a Viente y nueve de Octubre de mil ochocientos diez y ocho, yo D. Guill^{mo} King, Coronel del quarto regimiento de infantias del exercito de los E. W. Govenador Civil y Militare de esta plasa en la Florda Occidental, certificio que los otorgantes asi lo dijeron y firmaron con migo y el Secret^{o} Interino de esta Provincia.

Accepto:

DESIDERIO QUINA,
CIRILO DE MORANT,
GUIL'MO KING,
MIG'L McRINSEY.

17 Es copia de su original q[e] existeen este archivo publico. A que me respiero y a pedimento de parte doy la presente en Pensacola a viente y nuebe de Octubre, de mil Ochientos diez y ocho.

WILL. KING.

M. McREMSEY,
Act'g Civil Sect'y.

Reported by the commissioner.

JOSEPH E. CARO,
Secretary.

En la plasa de Pensacola, a los nuebe dias del mes de Noviembre de mil ocho cientos die y ocho, Antonio D[n] Guillermo King, Coronel del quarto regimiento de infant[a] del exercito de los E. U. Gubernador Civil y Militare de altra Plasa en la Florida occidental y del secr[to] interino de esta Provincia, comparecio D[n] Cirilo de Morant apererado General de D[n] Juan Chabaux, D[n] Lorenzo Millandon, y D[n] Luis Doqueminel de Morant, tujo vecimos de la N[a] Orleans, y digo: Que del pano de tierra de ocho cientos arpanes planos q[e] en viente y nuebe de Octubre ultimo compro de D[n] Desiderio Quina p[n] escritura parada en este opias, vende realmente y con efecto a otros senores sus podestantes seis ciento arpanes, reserbandose p[d] y los docientos arpanes restantes en parte indivisoa con los referidos senores libres de graramen e ypoteca lo q[e] us consta en esto oficio letter alguma en precio de seis cientos pesos q[e] he recivido de los compradores, y per no ser de presente la entrega otorgo formal recivo y carta de payo en forma medivante lo cual me giuto y separo del derecho
18 depropriedad Vlit, Dominio y senorio q[e] a altros seis cientos arpanes havia y tenia, y todo lo cedo, renuncio y transpaso en favor de los compraderos a en quien sa dro. y causa hubiere p[d] q[e] como lexitimos. Duenos los poseian, cambien, vendura, o enaguenen a su voluntad, en virtud de esta escritura que a su favor otorgo con lo q[e] ha de su visto haver adquenido sa posecion sin que resiciten de otra prueba de que les velbo, y a la viccion de ella me obligo en todo forma, de derecho, y como apodere de altros senores medav pr. entrigardo de los citados arpanos en el precio q[e] han vendidos y otorgo carta de pago en forma y pr. constancia de cuanto lleba relaciendo to formo con migo y el seco. into. de altra Prod.—Cirilo de Morant.

Como apoderado acepto esta venta—Cirilo de Morant—Guillmo. King—Migl. McKinsey.

Es copia de su origl. que existe en este Archivo Publico a q[e] me repievo y a pedimento de parte doy la presenta.

Pensacola a los diez y ocho dias del mes de Nobe. de mil ochiuntes diez ocho.

WILL. KING.

Rejected by the commissioners.

JOSEPH E. CARO,
Secretary.

Testemonio.

19–20 Señor Gobernador y Subdelegado de Real Hacienda, D[n] Cirilo de Morant Ayudante Mayor del Regim[to] Infant[a] de la Lousiana, con la atencion que debe a V. S. expone: Que teniendo intencion de em-

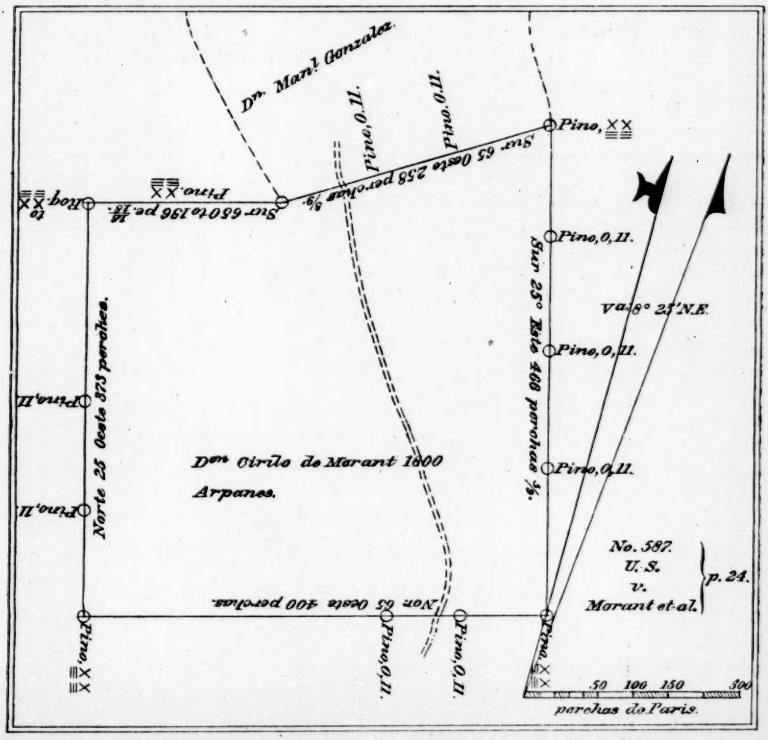
plear algunos fondos en Esclavos y Rices, con objeto de forman una hacienda de cultura y otra de ganados, y no teniendo tierras para el execto, y sabiendo que el Gobierno concede las que se hallan vacantes en esta Provincia, a los que como el suplicante, pueden formentarla, de un modo verlajoso, suplica a V. S. se sirva tener a bien acordarle por concesion mil y seis ciento arpanes de dichas tierras vacantes a las doce millas al N. O. de esta Poblacion, por la parte del S. E. de la que tiene establecida Dⁿ Manuel Gonzales; Gracia que espera alcansan de la justificacion de V. S. Pensacola 22 de Septembre de 1817.—Cirilo de Morant. Pensacola y Septiembre 22 de 1817. Pasa al 1ºⁿ Asesor general, y Auditor de guerra de estra Provincia—Masot. Pensacola y Septiembre 23 de 1817. Informe el agrimensor general si hay realeng vacante, en el parrage que cita, y haviendolo, pase a la vista del 1ºⁿ Fiscal de Real Hacienda—Asesoria doce reales Hernandes. Masot, Sᵉʳ Commandante y subdelegado de Real Hacienda. La mayor parte de les tierras situadas en el parage que solicita el promovente son realengas y vacantes por lo que resolvera V. S. lo que sea de suagrado. Pensacola 25 de Septiembre de 1817. Pedro Reggio. El Fiscal dice: Que resultando estar vacante la tierra
21 en que piede ser agraciado el suplicante por pertencer al Real Dominio, y estando reservada a la intendencia la facultad de concederlas a las personas en que concurran circumstanciados meritos al mismo tiempo que se segue el mejor partido de la venta mandada hacuper S. M. con exclusion de todo extrangero, es de parecer el Fiscal, que V. S. puede prefixarle la cantidad de arpanes que tengua a bien como se establece par el Artº 1º del Reglamento, si gradua amintado para ello al promovente para que pueda formar el establecimiento que propose con las tierras que necesita, para cultivo y parto de ganados a proporcion de la familia que tiene, previas las formalidades presintos en el Artº 15 no causando perjucio a tercero, pero antes ha de prestar juramento en forma de que no tiene parta en su solicitud, extrangero alguno, que no lo enagenara a ellos, y cumplira con el reglamento pᵈ que quede cumplida la voluntad de S. M. demastrada en esta parte en Rˡ Orden de 31 de Marzo de 1816 respecto a que no se presentan compradores para sacar, partido a favor de los gastos de la Provincia el tribunal sin embargo, resolvera lo que sea mas conforme a justicia que pide el Fiscal. Pensacola 4 de Octubre de 1817. Juan Miguel de Losada. En el mismo dia lo hicimos saver a Dⁿ Cirilo de Morant. Damos fú. Sevallos. Sausa. Pensacola y Octubre 8 de 1817. Vistos. Le concede a Dⁿ Cirilo de Morant los mil y seis cientos arpanes planos de tierra que solicita; tomese el juramento que requiere el informe Fiscal que antecede. Procedase a la medida y destinde por el agrimensor general, levantando Plano figuratido
22 que con las diligencias se agregara a este expediente citanto a los colindantes para que no resulte perjuicio a tercero, y expidasele el titulo corrospondiente, dandose cienta a la superioridad para la delida aprobacion, pagando el pretendiente las cortas a tasacion, y el testimonio qᵉ ha de quebar en el opicio: Aseiona dospasos Hernander, Masot. En el mismo dia ante el Sᵒʳ Dⁿ José Masot comandᵗᵉ desta provincia y el 1ᵉʳ Asesor general de ella, compareiro Dⁿ Corilo de Morant a quien S. Sᵈ preivo el juramiento que presto en delida forma, se le entero por menor del parecer del 1ᵉʳ Ministro Fiscal de Rˡ Hacienda, bien estarado de sa contenido; Dixo: que el pario de tierra que ha solicitande no ha putenecido, ni per-

tenece a persona alguna y que en esta virtud lo considera ser de la propriedad de S. M. (2 D. G.) con cuyo motivo no puede perjudican a tercara persona, que solo lo solicita para el establice misento que declara y su familia, que no hatenido hasta ahora concesion de tierra alguna, ni solar en esta plasa con que haya sido agraciado, ni que menos la solicita p[d] ningun estrangero, y que promete ni enagenarala a ninguno de estos, interin su mistencia. Que es cuanto puede decir en el particular a lo que se contratre el 1[or] Ministro y lo firmo con S. S[d] de que damos fu. Cirilo de Morant. Masot. Hermander. Domingo Sausa. Jose Sevallos.

Es conforme a sa original a que me venieto y a pedimiento de-
23 parte, doy, el presente en Pensacola a cinco de Abril de mil ochocientos diez y ocho.

JOSE MASOT.
DOMINGO SAUSA.
JOSE CEVALLOS.

Rejected by the commissioners of land claims for West Florida.
JOSEPH E. CARO,
Secretary to the Board.



24 Dn Pedro Reggio Teniente del Regimento de Infantaria de la Luisiana diputado agrimensor para la Provincia de la Florida Occi-

dental por Dⁿ Vincente Leb' Pintado, capitan de Infantᵃ Agrimensor gral y Real de la Misma.

Certifico que consequente al decreto que antecede deslinde medi acote los dias primero y dos de Marzo de los corrientas en presencia y para Dⁿ Civilo de Morant, un terzeno de mil seis cientos arpanes planos medidos a la parecha de Paris de dies y ocho pies lineales de la misma ciudad, contando cien perchas quadradas de superficie plana por arpan de area
25 segun costumbre geodetica de esta provincia cuyo terreno sehal!a sitando a doce millas y media al W. O. de esta Poblacion de Pansacola lindando par la parte del Norte con tierras de Dⁿ Manuel Gonzales y con realengas y por el del Oeste y Este con tierras vacantes del Real dominino y por el del sur con las de Dⁿ Desiderio Quina como mas claramente representa el plano que antecede en el que va figurado el terreno anotados las dimenciones de sus lados en perchas lineales de Paris, las direciones de los limites seguen la breinela la declinacion N. E. de esta, los arboles y mojones que sirven de linderos y los demas termino cotos y confines naturales y artificiales, y para que conste doy la presente en Pensacola a seis de Marzo del ano de mil ocho cientos diez y ocho.

PEDRO REGGIO.

Rejected by the commissioners of land claims in West Florida.

JOSEPH E. CARO,
Secretary.

(Copy.)

26 Know all men by these presents that I, Cirilo de Morant, adjutant-major of the regiment of Louisiana, and at present guarding this city, do grant that I sell, really and effectively, unto John Chabaux, Laurence Millandon and Company, a tract of land containing sixteen hundred superficial arpens, situated about twelve miles NW. from the town of Pensacola, on Tensaw road, belonging to me, as having acquired the same by virtue of a grant from Joseph Masot, governor and subdelegate of national finance, having date fourth day of October, one thousand eight hundred and seventeen. And it is the above-described tract of land which I sell to the above-mentioned John Chaubaux, Laurence Millandon and Company, free from incumbrance or mort'age, none appearing on the record of this office, for and in consideration of the sum of eight hundred dollars, reserving to myself the undivided fourth part of the aforesaid sixteen hundred arpens of land with the aforesaid gentlemen. Whereby I relinquish and release my right of property, posses'ion, interest, claim, and demand in and over said tract of land by me had and held, hereby ceding, renouncing, and transfer'ing the same unto the said purchaser' or their heirs or assignees, as true owners, with the exception of the fourth part above mentioned, to hold, enjoy, pos'ess, sell, or dispose of the same at their will, in virtue of this deed which I make in their favor, in token of real delivery, by which it will be seen that they have acquired pos'ession of the premises aforesaid, without requiring any other proff,
27 from which I relieve them. And I bind myself to the cor'ection and guarantee of this sale in due form of law, with my property present and to have, with power and submission to the justices in order to compel me to the fulfilment of the same. And I, Antonio Molino,

attorney in fact of the purchasers, being present at the making of the deed do accept it in their behalf, reserving therefrom the undiv'ed tract of land above mentioned, as purchased for the same and agreeably as sold, and in consequence thereof I grant a formal receipt. In testimony whereof the present is done at the city of Pensacola, this fourteenth day of June, one thousand eight hundred and twenty-one. I, Henry the Grant-Pre, a retired leftenant and constitutional alcade of the province of West Florida, do hereby certify that I know the parties who have thus acknowledged and signed the above, being instrumental witnesses. John de la Rua, Henry Michelet, and Dommigo Lausa; and of assisting witnesses those who sign with me. Cirilo de Morant, Antonio Molino. Before me, Henry de Grand Pre, Luis Daunoy, Sebastian Caro.

STATE OF FLORIDA,
Escambia County:

I, F. E. de la Rua, keeper of the public archives of West Florida, certify that the foregoing is a true and correct copy of the deed between the parties therein named, as the same remains on record in my office in book B, 2d vol., at pages 355 & 356.

Witness my hand and private seal, my seal official being lost or misplaced, this 15th of March, 1878.

F. E. DE LA RUA, [SEAL.]
Keeper Public Archives of West Florida.

28 Know all men by these present' that, whereas Laurence Millandon, of the May term, one thousand eight hundred and twenty-five, of the honorable the superior court of the western district of Florida, obtained judgement against John Ollie, executor of John Chaublaux, dec'd, for the sum of five hundred and seventy-three dollars, with interest on four hundred and ninety dollars from the 4th day of May, 1835, until paid, together with the sum of thirteen dollars and seventy-five cents for his costs in his suit expended, and on the twenty-third day of May, one thousand eight hundred and thirty-five, sued out his execution for the sum of five hundred and eighty-six dollars seventy-five cents, being for the judgment aforesaid, in virtue of which execution to me directed I, James W. Evans, marshal of the said western dist. of Florida, levied upon and attached the following tracts of land as the property of John Chalaux, dec'd, lying and being in the county of Escambia, to wit: The one undivided fourth part of two concessions of land, one of eight hundred arpens, and the other of sixteen hundred arpens, about twelve miles from Pensacola, on the Tensas road, and advertised the same for sale at public vendue, according to law, and on the first day of August, 1835, being the day of sale, Laurence Millandon bid off the above one undivided fourth part of the above-mentioned two concessions of land, one of eight hundred arpens and the other of sixteen hundred ar-
29 pens, for the sum of forty dollars, he being the highest and best bidder.

Now, I, James Enum, marshal as aforesaid, in virtue of the premises, and for and in consideration of the sum of forty dollars to me in hand paid to me by the said Laurence Millandon, the receipt whereby I hereby

acknowledge, have bargained, sold, and delivered, and by these presents do bargain, sell, and deliver, unto the said Laurence Millandon all the right, title, and interest of John Chalaux, dec'd, in the above two tracts of land, one of eight hundred arpens, and the other of sixteen hundred arpens, hereinbefore mentioned and described, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to have and to hold the said one undivided fourth part in the two concessions of land, together with the hereditaments and appert'nances, unto the said Laurence Millandon, his heirs, executors, administrators, and assignee forever.

In testimony whereof I have herewith set my hand and seal in the city of Pensacola, this third day of August, in the year of our Lord one thousand eight hundred and thirty-five.

JAMES W. ENUM, [SEAL.]
Mar.,
By JOSEPH SIERRA,
Dep'ty Marshal.

Signed, sealed, and delivered in presence of—
F. T. COMMYNS.
M. CRUPPER.

TERRITORY OF FLORIDA,
Escambia County:

30–31 This day James W. Enum, marshal of the western district of Florida, by his deputy, Joseph Sierra, appeared before me, M. Crupper, clerk of the court of the county aforesaid, and acknowledged that he executed the foregoing instrument of writing for the uses and purposes therein mentioned.

Given under my hand at Pensacola this sixth day of August, one thousand eight hundred and thirty-five.

M. CRUPPER, *Clerk.*

STATE OF FLORIDA,
Escambia County:

I, F. E. de la Rua, clerk of the circuit court in and for the county and State aforesaid, certify that the foregoing is a true and correct copy of a deed from James W. Erum, U. S. marshal, by his deputy, Joseph Surra, to Laurence Millandon, as the same remains of record in my office in record book C, at pages 156 to 157.

In witness whereof I hereunto set my hand and affix my seal official, at Pensacola this 16th day of March, A. D. 1878.

F. E. DE LA RUA,
Clerk C't Court.

32 "In the city of Pensacola, on the ninth day of the month of November, one thousand eight hundred and eighteen, before me, William King, colonel of 4th regiment of United States infantry, civil and military governor of the city aforesaid, in the province of West Florida, personally appeared Cerilo de Morant, attorney in fact of John Chabaux, Laurence Mellandon, and Louis Dongueminel de Morant, junior, inhabitants of the city of New Orleans, and declared that out of the tract of land of eight hundred superficial arpens which on the twenty-ninth of

October last he purchased of Desiderio Quina by deed of sale passed in this office, he, the said de Morant, sells really and in fact to the aforesaid Chabaux, Millandon, and Dongueminel de Morant, junior, six hundred arpens, reserving to himself the remaining two hundred arpens in part undivided with the aforementioned gentleman, free from incumbrances or mortgage, none appearing on the record of this office, for the sum of six hundred dollars cash, which he, the said Cerilo de Morant, have received from the said purchasers, the receipt whereof he does hereby acknowledge, whereof he relinquish and divest himself of the right of property, possession, and demand, which to the said six hundred arpens of land he had and held, and he does by these presents renounce, assign, and transfer the same unto the said purchasers, their heirs, and assignee', in order that they may as true owners thereof enjoy, possess, sell, or dispose of the above premises at their will, in virtue of this deed, which he executes in favor of the above mentioned purchasers, whereby it appears that
33 they have acquired possession of the above granted premises without requiring any other proof with which to invest them in form, binding himself to the surety of this sale in due form of law, and as the attorney in fact of said gentleman he receives therefrom the said above mentioned arpens for the sum and agreeably as sold to him, granting receipt in full.

In testimony whereof, the said Cerilo de Morant has hereunto set his hand and seal with me and the secretary ad interim of the province aforesaid. Cerilo de Morant. [SEAL.]

I accept this confidence as attorney. CERILO DE MORANT.
WILLIAM KING.
M. McKINSEY.

STATE OF FLORIDA,
Escambia County:

I, F. E. de la Rua, keeper of the public archives of West Florida, certify that the foregoing is a true and correct copy of a deed between the parties therein named, as the same remains of record in my office in book B, 2d vol., at page 235.

Witness my hand and private seal, my seal official being lost or misplaced, this 15th day of March, A. D. 1878.

F. E. DE LA RUA, [SEAL.]
Keeper Public Archives of West Florida.

34 [Translation of Exhibit A.]

Cirilo de Morant's claim to 1,600 *arpens of land.*

GOVE'NOR AND SUBDELAGATE OF THE ROYAL EXCHEQUER:

SIR: Mr. Cirilo de Morant, first adjutant of the regiment of Louisiana, with that attention that is due to your excellency, says:

That having the intention to invest some funds in slaves and cattle for the purpose of establishing a farm for culture, and another for cattle, and not having lands to do so, and knowing that the Government grants such as are vacant in this province to these who like the petitioner can advantageously forment them, begs your excellency to make to him the concession of sixteen hundred arpens of said vacant lands, twelve miles to the NW.

of this place, on the SE. side of the land established by Mr. Manuel Goverder, a favor which he hopes to obtain from the justice of your excellency.

Pensacola, 22 September, 1817.

CIRILO DE MORANT.

PENSACOLA, *September* 22, 1817.

Pass to the asse'sor-general and auditor of war of this province.

MASOT.

PENSACOLA, *September* 23, 1817.

Let the surveyor-general inform whether there are vacant lands at the place which is mentioned, and there being, let it pass to the fiscal of the royal exchequer. Tax, 12 bits.

HERNANDES.
MASOT.

SIR GOVE'NOR AND SUBDELAGATE OF THE ROYAL EXCHEQUER:

The greater portion of the lands situated at the place solicited by the petitioner are royal and vacant lands, so that your excellency will determine what please.

Pensacola, 25 September, 1817.

PEDRO RIGGIO.

35 The fiscal says that the land applied for by the petitioner being vacant, and belonging to the royal domain, and it being reserved to the administration the favor to grant them to those who pos'ess known merits, at the same time that there be obtained the best result from the sale ordered to take place by His Majesty, with exclusion to all strangers (foreigners), the fiscal is of opinion that there can be granted to him the quantity of arpens that your excellency may choose, and as is established by the article 1st of regulations, if your excellency deems him meritori'us thereto, so that he may establish what he proposes with the lands that he needs for cultivation and pasture for cattle in proportion to the family that he has, subject to the formalities prescribed in article 15, and not causing injury to a third party, but he must first be duly sworn that no stranger (foreigner), has an interest in his petition, that he will not sell the land to such, and will comply with the regulation so that may be complied with the will of His Majesty expressed touching such matters by royal order of 31 March, 1816, with respect to their not being purchasers to obtain advantage in favor of the expenses of the province. The tribunal will provide determine what may be more condusive to justice and which the fiscal asks.

Pensacola, 4 October, 1817.

JOHN MIGUEL DE LOSADO.

On the same day we make it known to Mr. Cirilo de Morant.

In faith whereof.

LERALLOS.
SAUSA.

PENSACOLA, *October* 8, 1817. SUN.

There is granted to Mr. Cirilo de Morant the sixteen hundred
36 arpens of land that he asks. Let him be sworn as required by the above information of the fiscal, and that the surveyor-general proceed to the measurement and survey, drawing a figurative plan which, with the proceedings, will be annexed to this matter, citing those contiguous to the land so that there may not result prejudice to a third party, and let the corresponding title be paid, giving an account to the superiority for the due approbation, the petitioner paying the costs that are to be taxed, and for the testimony which must remain in the office. Tax, $2.

HERNANDEZ.
MASOT.

On the same day before Mr. Jose Masot, commandant of the province, and before the asses'or general thereof, appeared Mr. Cirilo de Morant, to whom his excellency, prior to the oath which he took in due form, informed of the opinion of the fiscal minister of the exchequer, and, being well informed of its contents, he said that the tract of land which he has solicited has not belonged nor does belong to any one, and that therefore he considers it the property of his majesty (that God preserve), and for which reason a third party cannot be prejudicial; that he only solicits it for the purpose of establishing which he has declared and for his family; that he has not until now had a concession of land, nor of a lot in this city, granted to him, nor less does he solicit it for any stranger (foreigner), and that he promises not to sell it to any such during his life-time, and it is all he can say on the subject, to which the minister refers, and he signs with his excellency of which we give faith.

CIRILO DE MORANT.
MASOT.
HERNANDEZ.
37 DOMINIGO SAUSA.
JOSE CERALLOS.

It conforms with its original, to which I refer, and at the request of the party I issue these presents at Pensacola on 5th April, 1818.

JOSE MASOT.
JOSE CERALLOS.
DOMINGO SAUSA.

Rejected by the commissioners of land claims for West Florida.

JOSEPH E. CARO,
Secretary of the Board.

Dn. Pedro Reggio, lieutenant of the regiment of infantry of Louisiana, deputised as surveyor for the province of West Florida by Mr. Vicente Seb'n Puitado, captain of infantry, surveyor-gener'l & royal of same province, certify that in accordance with the foregoing decree I surveyed, measured, and bounded in the first and second days of March of the present year, in presence of and for Mr. Cirilo de Morant, a tract of sixteen hundred arpens (plain) of land, measured according to the perch of Paris of eighteen lineal feet of same city, counting one hundred square perches of plain superficial per arpen of surface, according to the geodatical custom of

this province, which tract is situated twelve and a half miles NW. of this place of Pensacola, bounded on the north with lands of Mr. Manuel Gonsalez and royal lands, and on the west and east with vacant lands of the royal domain, and on the south with these of Mr. Desidero Quina, as is more clearly shown by the foregoing plan in which are figured the
38–39 land, noted the dimension of its sides in lineal perches of Paris, directions of its limits according to the compass, the declension NE. from that, the trees and land-marks which served as boundaries, and other terminus and marks and confines, natural and artificial. And so that it may appear, I issue these presents at Pensacola, on 6th March, in the year one thousand eight hundred and eighteen.

PEDRO REIGGIO.

Rejected by the commissioners of land claims.

JOSEPH E. CARO,
Secretary.

STATE OF FLORIDA,
Escambia County:

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing four and a half pages contains (less the two an'otations of rejection, which are in the English language) a true and correct translation from the Spanish into English, touching the grant of land to Cirilo de Morant, as the same appears of record in my office in the Spanish language in book A of commissioners of the U. S. proceedings, the plat of land therein referred to, and which appears of record in said proceedings not being here given by me.

Witness my hand and private seal, my official seal being lost, this 19th March, A. D. 1879.

F. E. DE LA RUA, [SEAL.]
Keeper of Public Archives of West Florida.

40 [Translation of Exhibit B.]

Cirilo de Morant presented a claim to 800 arpens of land granted to Desiderio Quina, and by the grantee to claimant by act of sale dated 29th October, 1818.

SIR, Gove'nor and subdelegate of the Royal Exchequer:

Mr. Desiderio Quina, a citizen of this place, with the respect that is due to your excellency, says:

That having served His Majesty for fifteen years, until he became first sergeant in theregiment of Lou'sianna, from which he was discharged so as to marry, and now having a rather large family, and with means to use lands as well as for stock-raising as in cultivation, and knowing that lands of the royal domain are grat'itously granted in this province to those who like himself, can advantageously make them useful. To your excellency prays to please grant him eight hundred arpens, which he will select suitable to the uses which he proposes, out of the vacant lands, at the time of the making of the survey. Favor which he hopes to deserve from the justice and goodness of your excellency.

Pensacola, 3 December, 1817. D. QUINA.

PENSACOLA, 3 *December*, 1817.

Let the acting surveyor inform if the land which is solicited is of the royal domain, and vacant—and it being so, let it pass to the Fiscal of the Royal Exchequer.

MASOT.
DOMINGO SAUSA.
JOSE CERALLO.

On same day we made it known to Desiderio Quina.
In faith whereof—

JOSE CERALLOS.
DOMINGO SAUSA.

41 Mr. Commandant and subdel*a*gate of the Royal Exchequer:

The petitioner does not state the place where he solicits the donation of eight hundred arpens of land, and saith that he will select them out of the vacant royal lands.

Wherefore your excellency will determine what may be your pleasure.
Pensacola, 18 December, 1817.

PEDRO REGGIO.

PENSACOLA, *December* 20, 1817.

Inasmuch a' I leave to the election of the surveyor to select the lands as prayed for by the petitioner, he will put him in pos'session, taking care that what may be selected be royal lands.

MASOT.
DOMINGO SAUSA.
JOSE CERALLOS.

SIR GOVE'NOR AND SUBDELAGATE: Mr. Desiderio Quina, a citizen of this place, with the veneration which is due to your excellency, says, that having found the land that may suit him, at the twelve miles NW. of this place on the SE. of that which is established by Mr. Manuel Gonsalez, begs your excellency to fix said place as the one which he will deserve from the justice of your excellency.
Pensacola, 20 January, 1818. DESIDERIO QUINA.

As he asks it and it being royal lands.

MASOT.

It is in conformity with the original to which I refer, and at the request of the party I issue this, at Pensacola, on 1st May 1818.

MASOT.
DOMINGO SAUSA.
JOSE CERALLOS.

42 Mr. Pedro Reggio, lieutenant of the regiment of infantry of Louisiana, acting surveyor for the province of West Florida by appointment of Mr. Vincinte Sebastian Pintado, capt. of infantry, surveyor-general, and royal of the same, certifies that, in compliance with the foregoing decrees of Mr. Jose Masot, commandant and subdel*a*gate of the royal exchequer of last year and of 20 January of the present year, I sur-

veyed, measured, and bounded on the 3d of the present month, in presence of and for Mr. Desiderio Quina, a tract of land of eight hundred plain arpens, measured according to the perch of Paris of eighteen lineal feet of same city, counting one hundred square perches of plain superficial per arpen of surface, according to the geoditical custom of the province, which land is situated eleven miles to the n. w. of this place of Pensacola, bounded on the north with lands surveyed for Cirilo de Morant, on the east, south, and west with vacant lands of the royal domain, as is more clearly shown by the foregoing plain, in which is figured the land, noted the dimensions of its sides in lineal perches of Paris, the directions of the limits according to the compass, the declensions n. e. from that, the trees that served as boundaries, and the other terminus and marks and confines, natural and artificial. And that it may appear I issue these presents at Pensacola, on 6 March, eighteen hundred and eighteen.

PEDRO REGGIO.

43 Rejected by the commissioners of land claims in West Florida.

JOSEPH E. CARO,
Secretary.

STATE OF FLORIDA,
Escambia County:

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing three and a half pages contain (less the annotation of rejection, which is in English language) a true and correct copy, translation from the Spanish unto English, touching the grant of land to Desiderio Quina, as the same appears of record in my office, in the Spanish language, in Book A of proceedings of U. S. commissioners, pages 260 and 261; the plat of the land referred to, and which appears of record in said proceedings, not being here given by me.

Witness my hand and private seal, my seal official being lost, this 20th day of March, A. D. 1879.

F. E. DE LA RUA, [SEAL.]
Keeper Public Archives of West Florida.

44 "Know all men by these presents that I, Disederio Quina, of the city of Pensacola, do hereby grant that I sell really and in fact to Cirilo de Morant, resident of the city aforesaid, a tract of land containing eight hundred arpens situated at eleven miles NW. from the town of Pensacola, bounded north by lands surveyed for Cirilo de Morant, and on the E., S., & W. by lands of the royal domain as will more fully appear by the figurative plot executed by Peter Riggio, deputy surveyor, and the same which were granted to me gratuitously by his excellency Joseph Massot, colonel of the royal corps of artillery, gove'nor and subdelagate of the royal finance, formerly of the province of West Florida, on the the twentieth day of December, 1817, the titles of which I delivered in this office in proof thereof. And I sell him the above-described tract of land free from incumbrance or mort'age, none appearing on the records of this archives, for the sum of four hundred dollars cash, which I recognize to have received from the purchaser, the receipt whereof I do hereby acknowledge, whereby I relinquish and divest myself of the right of property, pos-

'ession, claim, and demand, which to the said arpens of land I had and held, hereby ceding, renouncing, and transfering the same in favor of the purchaser, his heirs and assigns, in order that, as the owner thereof, he may enjoy, pos'ess, sell, and dispose of the said premises at will in virtue of this deed which I make in his favor, whereby it is shown that he has acquired pos'ession of the above-granted premises without requiring any other proof, with which I invest him in form. And I bind myself
45 to the surety of this sale in due form of law, with my property present and to have, with power and submission to the justices in order to compel me to its fulfillment. And I, the above-mentioned Cirilo de Morant, being present at the making of this deed, do accept it in my favor, receiving therefrom the above-mentioned tract of land for the sum and agreeably as sold to me, acknowledging its being placed at my disposal.

In testimony whereof the present is done in the city of Pensacola, on the twenty-ninth day of October, one thousand eight hundred and eighteen.

I, William King, colonel 4th Regiment of United States Infantry, civil and military gove'nor of the city aforesaid, in the province of West Florida, do hereby certify that the parties have thus acknowledged and signed the foregoing with me and the secretary ad interim of the province aforesaid.

DESIDERIO QUINA.
CIRILO DE MORANT.
WILLIAM KING.
M. McKINSEY.

STATE OF FLORIDA,
Escambia County:

I, F. E. de la Rua, keeper of the public archives of West Florida, hereby certify that the foregoing is a true and correct copy of a deed from Desiderio Quina to Cirilo de Morant, as the same remains of record in my office in book B, 2 C, volume record of translation, at pages 233 to 234.

In witness whereof I herеunto set my hand and private seal, my official seal being lost or misplaced, this 18th day of March, A. D. 1878.

F. E. DE LA RUA, [SEAL.]
Keeper of Public Archives, West Florida.

45½ And afterward, on the 9th day of March, A. D. 1870, the following answer of the United States was filed by H. Bisbee, jr., U. S. dist. attorney:

46–47 In the United States district court, northern district of Florida.

Answer of United States of America to the petition of Mathilde de Morant, widow of Bienvennue and one of the heirs of Cirilo de Morant, and others.

The said United States of America, by H. Bisbee, jr., United States district attorney for said district, answering the joint petitions, say that they deny all knowledge of the allegations, matter, and things in said petition appearing and set forth, and of the title, claims, and demand of the said petitioners set up in said petition, in manner and form as the same is therein stated, and pray that petitioners may be put upon their proof thereof.

H. BISBEE, JR.,
U. S. Dist. Att'y.

(Copy.)

48 And on the 6th day of March, A. D. 1874, J. B. C. Drew for U. S. & A. E. Maxwell for petitioners filed the following stipulations, to wit:

49–50 District court of United States, northern district of Florida, at Pennsacola.

THE HEIRS OF CIRILO DE MORANT, OF DOQUMENIEL DE MORANT, & LAURENT MILLANDON
vs.
THE UNITED STATES.
} Petition for confirmation of Spanish grant.

It is hereby stipulated and agreed by the parties hereto, the petitioners represented by A. E. Maxwell and E. A. Perry and the United States by U. S. Att'y J. B. C. Drew, that the U. S. att'y, being satisfied of the truth of the name and for the purpose of saving expense, it is, and at the hearing of this cause shall be, admitted:

1st. That Cirilo de Morant, Doqumeniel de Morant, and Laurent Millandon are dead.

2d. That the petitioners are the legal representatives of the said Cirilo de Morant & Doqumeniel de Morant and said Laurent de Morant.

Pensacola, Feb'y 6th, 1874.

JAS. B. C. DREW,
U. S. Att'y.
A. E. MAXWELL,
For Petitioners.

(Copy.)

51 And on the 6th day of March, A. D. 1874, the following order of court of reference to commissioner to take testimony was filed.

52–53 District court of the United States & the northern district of Florida, at Pensacola. March term, 1874.

HEIRS OF CIRILO & DOQUEMENEL DE MORANT and LAURENT MILLANDON
vs.
THE UNITED STATES.
} Petition for confirmation of special grant.

By consent of parties it is ordered that this cause be referred to a commissioner of this court, to wit, to George E. Wentworth to take testimony. That having taken the testimony offered by the parties, he report the same to this court with all convenient speed.

PHILIP FRASER, *Judge.*

Filed March 6th, 1874.

M. P. DE RIOBOO, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Florida:

I hereby certify the foregoing to be a true copy from the files of my office.

Dated this March 6, 1874.

M. P. DE RIOBOO, *Clerk.*

54 And afterward, on the 29th day of May, A. D. 1874, the following interrogatories by A. E. Maxwell and E. A. Perry, esqs., and cross-interrogatories by J. B. C. Drew, U. S. dist. attorney, per C. W. Jones, esq., was filed:

55 Interrogatories to be propounded to Francisco Morone and Peter Gonzalez, material witnesses in behalf of the petitioners in the matter pending in the district court of the United States for the northern district of Florida, at Pensacola, wherein the heirs of Cerilo and Dogumenel de Morant and of L. Millandon are petitioners, and the United States of America are respondent, being a petition for confirmation of Spanish grants.

First interrogatory. Where do you reside and how long have you resided there?

Second interrogatory. Do you know anything of the practice of the Spanish authorities in making land grants in West Florida prior to the cession of Florida to the United States? Where you or not connected with any office through which said grants passed; and, if so, where and what office?

Third interrogatory. Do you know anything of two grants, one to Ciriel de Morant and another to Desiderie Quina, ten or twelve miles north of Pensacola? If so, look upon accompanying papers shown you, marked A and B, and hereto attached, and state whether or not they conform to the practice in making such grants at the time. Are you familiar with the signatures of the parties whose names are attached to said papers; and, if so, state whether or not said signatures are genuine; state also from
56 your own knowledge of such grants whether said grants shown you are such as were given to grantees in making grants.

Fourth interrogatory. Do you know whether the grantees, Morant, and Quina, occupied, cleared, and settled, and cultivated the lands granted to them, respectively? If you do, state same as to each of said grantees, mentioning time when the lands were built upon, as near as you can remember.

Fifth interrogatory. State anything else you may know for the benefit of the petitioners in this suit.

E. A. PERRY,
A. E. MAXWELL,
For Petitioners.

57 Cross-interrogatories in behalf of the United States to be propounded to the above-named witnesses.

First cross-interrogatory. If you say that you are acquainted with the practice of the Spanish Government in making land grants in West Florida, state whether you derived your information from the established rules of said Government as published, or from the office of said Government while they occupied the country. State what office you occupied under the Spanish Government in West Florida.

Second cross-interrogatory. State how long you have been acquainted with the two grants referred to in the 3d direct interrogatory. Were you in West Florida when they were made? If you say that they were made

in accordance with the practice of the Spanish Government above referred to, state whether you derived this knowledge from other persons or not.

Third cross-interrogatory. State what was the character of the improvements and settlements made by the said grantees upon the said lands; were they temporary or permanent, and in accordance with the practice or usages of the country at the time?

Fourth cross-interrogatory. Tell anything else which may be of importance in this case, and which you have not been specially
58 instructed about.

J. B. C. DREW,
U. S. Dist. Att'y,
By C. W. JONES.

59 PENSACOLA, FLORIDA,
Sept. 30, 1869.

I hereby certify that the plat within is a correct exhibit of the Spanish grants of 1,600 arpents of land to Dn. Cerilo de Morant and of 800 arpents to Dn. Desidiue Quina, and also a correct exhibit of the same according to the division and subdivision by surveys of the Government of the United States.

S'g'd,

WM. F. LEE,
Civil Engineer and Surveyor.

[Diagram marked p. 59 follows.]

60 And on the 29th day of May, A. D. 1874, the following testimony by Geo. E. Wentworth, com'r was taken, and after being reduced to writing and signed by witnesses, was filed:

61 HEIRS OF CERILO AND DOQUEMENEL de Morant and Laurent Millandon *vs.* THE UNITED STATES. } Petition of confirmation of Spanish grant.

By virtue of an order from the United States district court for the northern district of Florida, referring the above entitled cause to me, Geo. E. Wentworth, United States commissioner in and for the said district, at the city of Pensacola, upon this 29th day of May, A. D. 1874, there came before me, the above-named parties, by their attorneys, and also the following named witnesses, Francisco Moreno and Peter Gonzalez, whom I proceeded to examine upon the inter'ogations and cross-inter'ogations hereto affixed, and the said Francisco Moreno, being carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

The evidence filed in the case were the several grants, conveyances, and plats hereinbefore copied, the stipulation as to heirs, and the following depositions:

To the first interrogatory he answers and says: City of Pensacola and have resided their since 1804.

To the second interrogatory he answers and says: Yes; I know the par-

ties. I was connected with said office in the city of Pensacola. Officer was that of treasurer of the customs. I also acted as contalor fiscal.

To the third interrogatory he answers and says: Yes; I know
62 of these grants. I was here when they were granted in 1817. Yes, they conform to the practice. Yes, I am familiar with the signatures of the parties whose names are attached to the papers, and they are genuine. They are such as were given to grantees in making grants.

To the fourth interrogatory he answers and says: I know that they went into possession and cleared, fenced, and built houses upon the grant between the year 1818 and 1820.

To the fifth interrogatory he answers and says: I know nothing else except that I have been a hundred times in the houses built upon the grants by the grantees.

To the first cross-interrogatory he answers and says: I know it because I read the regulations which were in the office I held. First I was clerk in the office of the contador, Don Jual Miguiel de Losada; subsequently I filled the office of contador in place of Losada.

To the second cross-interogatory he answers and says: I have known the grants since they were granted in 1817. Yes, I was; derived it from his own knowledge of practice and regulations.

To the third cross-interrogatory he answers and says: They were log houses, and were just such as all the country people had.

To the fourth cross-interrogatory he answers and says: All I can say is, if there are any good grants they are the ones.

F. MORENO.

63 Peter Gonzalez, being carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

To the first interrogatory he answers and says: I reside near the city of Pensacola, and have resided in and near the city of Pensacola since 1810, and for many years my father resided about 15 miles north of Pensacola, where I resided most of the time until 1822.

To the second interrogatory he answers and says: Cannot say that I do know anything of the practice. I was not connected with any such office.

To the third interrogatory he answers and says: I know that my brother had a contract to build a house upon each grant, and did build them, and I was employed by him. I know nothing further in answer to the third interrogatory.

To the fourth interrogatory he answers and says: I was young at the time, but for the reasons stated in my answer to last interrogatory I recollect the houses were built, and am quite certain the lands were fenced. I cannot recollect the each time the houses were built, but I know that the houses were there before Jackson came. My father's house was about three miles from these grants, and I know Jackson made his headquarters at my father's house.

64 To the fifth interrogatory he answers and says: All I know is that they were grants, and my brother went there to build the houses and I went to burn the trash, and I remember I got my first fur hat for doing it.

To the first cross-interrogatory he answers and says: I know nothing particular of the practice, and I held no office.

To the second cross-interrogatory he answers and says: Yes, I was in West Florida when they were made.

To the cross-interrogatory he answers and says: They were built like all houses of that time, of logs.

To the fourth cross-interrogatory he answers and says: Know nothing further.

PETER GONZALEZ.

And I do further certify that the preceding depositions were reduced to writting by me and signed by the said witnesses, Francisco Moreno and Peter Gonzalez, and that I am not an attorney for either of the parties to said suit, nor am I in any way interested therein.

GEO. E. WENTWORTH,
U. S. Commissioner, Fifth Judicial Circuit,
Northern Dist. of Florida.

65 And on the March term of said court, A. D. 1880, the following decree was entered:

66 United States district court for the northern district of Florida.

Decree.

MATHILDE de MORANT AND OTHER HEIRS OF Cerilo de Morant, H. Clement Millandon, Benjamin L. Millandon, Edward Burthe, Emanuel Burthe, Frederick G. Burthe, Andre Burthe, Margaret Burthe, Madeline Millandon, Genevive Millandon, Lizzie Mills, Marie and Abot Tarnbourg, heirs of Laurent Millandon and Clementine Morant Pichot, and the heirs of Louis D. de Morant,
vs.
THE UNITED STATES.
} Petition to confirm Spanish grants.

This cause coming on to be heard at March term, 1879, upon the petition, answer, and proofs and argument of counsel, now, at March term, 1880, upon consideration thereof, and it appearing to the court that the Spanish Government did make and complete the grants claimed by the petitioners prior to the cession of Florida to the United States by Spain, viz: The grant of sixteen hundred arpents of land to Cerilo de Morant and of eight hundred arpents to Desiderio Quina, and that the petitioners are the heirs now entitled to said lands:

It is therefore ordered, adjudged, and decreed that the grants of sixteen hundred arpents to Cerilo de Morant, situated northwest of the city of Pensacola, in West Florida, at the distance of about twelve miles and a half, bounded northwardly by lands previously granted to Emanuel
67 Gonzalez, and public lands, eastwardly and westwardly by public lands, and southwardly by lands granted to Desiderio Quina, and of

eight hundred arpents to Desiderio Quina, situated about eleven miles northwest of Pensacola, in West Florida, were and are valid grants and that the petitioners are entitled to the same.

THOMAS SETTLE, *Judge.*

March 20th, 1880.

I hereby certify that the above and foregoing is a true copy of the original decree in the causes stated, now on file in my office.

In testimony whereof I have hereunto set my hand and official seal of the court at Pensacola, Florida, this 13th day of July, A. D. 1880.

[SEAL.] GEORGE E. WENTWORTH,
Clerk,
By FRANK MAURA, *Deputy Clerk.*

68 And on the 7th day of March, A. D. 1884, the following order of court was entered:

69 U. S. district court, northern dist. of Florida.

MATHILDA DE MORANT
vs.
THE UNITED STATES. } Petition for confirmation of Spanish grant.

This cause coming on this day to be heard, on motion of Edward M. Chesney, U. S. attor'y, E. A. Perry, esq., solicitor for the petitioner, being present and consenting.

Whereas it appears to the satisfaction of the court that an appeal from the decree rendered in the above-entitled cause at the March term, 1880, of said court was taken by the United States, but that the same does not appear of record; it is ordered that the said appeal be entered nuc pro tunc, and that the U. S. attorney have leave to perfect the said appeal.

Done in open court this 7th day of March, A. D. 1884.

THOMAS SETTLE,
Judge.

70 I, F. C. Humphreys, clerk of the United States district court for northern district of Florida, do hereby certify the foregoing 80 pages constitute a true copy of all the proceedings and a correct copy and transcript of the record in the case of Matilda de Morant et al. vs. The United States, as the same appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and official seal of said court, this 23d day of August, A. D. 1884.

[SEAL.] F. C. HUMPHREYS,
Clerk U. S. District Court, Northern District of Fla.

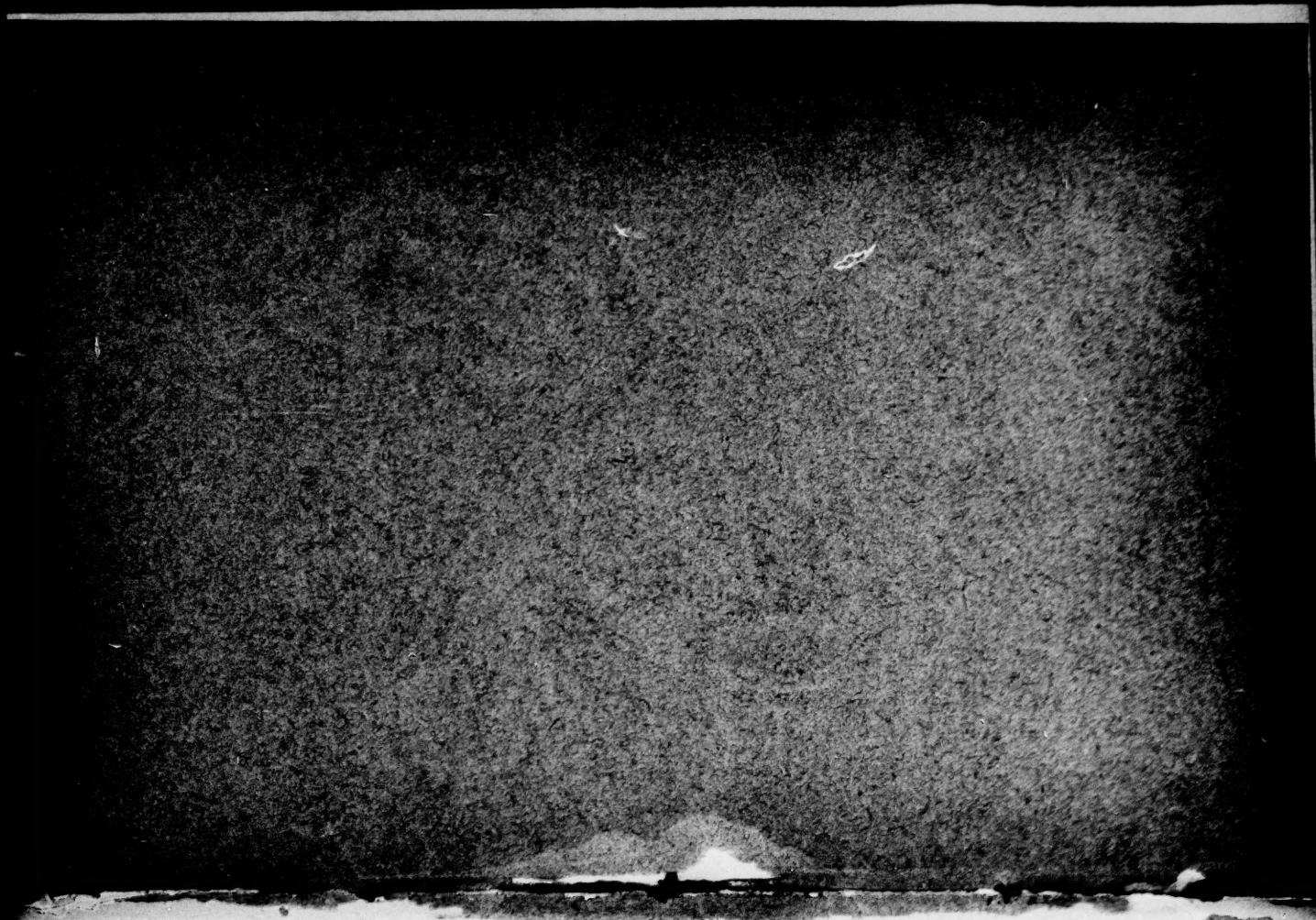
(Indorsed on cover:) No. 587. The United States, appellant, vs. Mathilde de Morant et al., heirs of Cerilo de Morant, H. Clement Millandon et al. N. Florida, D. C. U. S. Filed 19th September, 1884.

123-335

In the Supreme Court of the United States

OCTOBER TERM, 1886.

UNITED STATES, APPELLANTS,
vs.
MATHILDE DE MORANT ET AL., HEIRS of Cerilo de Morant, H. Clement Millandon *et al.* } No. 306.



In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, APPELLANTS,
vs.
MATHILDE DE MORANT ET AL., HEIRS of Cerilo de Morant, H. Clement Millandon *et al.* } No. 306.

STATEMENT OF THE CASE.

The petitioners in the district court for the northern district of Florida applied for the confirmation of two Spanish grants purporting to have been made, respectively, to Cerilo de Morant and Desiderio Quina, from whom they claimed to have derived title. The petition was presented on the 22d of November, 1869, in pursuance of the act of the 2d of March, 1867 (14 U. S. Stat., p. 544), which had extended the provisions of the act of the 22d of June, 1860, for a period of three years. Evidence was presented to, and heard by, the court. A decree of confirmation was made, from which the United States, in pursuance of the mandatory provisions of the act, appealed.

ASSIGNMENT OF ERROR.

The court erred in entering decree of confirmation, which decree is as follows:

Decree.

This cause coming on to be heard at March term, 1879, upon petition, answer, and proofs and arguments of counsel, now, at March term, 1880, upon consideration thereof, and it appearing to the court that the Spanish Government did make and complete the grants claimed by the petitioners prior to the cession of Florida to the United States by Spain, viz: The grant of 1,600 arpents of land to Cerilo de Morant, and of 800 arpents to Desiderio Quina, and that the petitioners are the heirs now entitled to said lands:

It is therefore ordered, adjudged, and decreed that the grants of 1,600 arpents to Cerilo de Morant, situated northwest of the city of Pensacola, in West Florida, at the distance of about 12½ miles, bounded northwardly by lands previously granted to Emanuel Gonzalez and public lands, eastwardly and westwardly by public lands, and southwardly by lands granted to Desiderio Quina, and of 800 arpents to Desiderio Quina, situated about eleven miles northwest of Pensacola, in West Florida, were and are valid grants, and the petitioners are entitled to the same.

March 20, 1880.

Specification first.

The decree is erroneous and void, because the court had no jurisdiction.

(*a*) The record does not show that the claim did not

come within the purview of section 3 of the act 22d June, 1860.

(*b*) The alleged claimants do not represent the whole title to the land claimed.

(*c*) The petition is defective, because no sworn copy of Government surveys is annexed to it.

Specification second.

There was no sufficient evidence that the alleged grants were genuine.

Specification third.

The grants, if genuine, were void.

(*a*) They were indescriptive grants, which, on the 22d of January, 1818, had not been surveyed, and, as against the United States, no title or right to the lands therein described is vested in the grantees.

(*b*) If the grants were descriptive they were not located on the land called for in the grants, and the survey having been made after the 24th January, 1818, the grants were void.

(*c*) The grants were, in any event, inchoate and imperfect, and as there is no evidence that the alleged grantees or their privies had been in possession within the period of thirty years or had taken any sufficient action to enforce their execution or maintain their alleged claims, they were abandoned.

BRIEF OF ARGUMENTS.

The *Act of* 22 *June*, 1860 (12 Stat. L., 1885) constituted a commission for the examination of Spanish land grants in Florida. (*Vide* Appendix A.)

The act of 2d March, 1867, extended the term limited in the last mentioned act until the 2d of March, 1870. (14 Stat. L., 544.)

The proceedings in this case are had under the last-named statute.

I.

Neither the district court of the northern district of Florida, nor this court are shown by the record or the evidence to have had, or to have jurisdiction of this case. The jurisdiction is a special one, granted by the act 22 June, 1860. The act constitutes a commission to pass upon all Spanish land grant claims (sections 1 and 2), whilst by the third section it empowered the commission to pass upon claims presented to it. The clause of the twelfth section, giving jurisdiction to the court under which this suit purports to be brought (referring to the claimants and their representatives), declares they "may at their option, instead of submitting their claim to the officer or officers hereinbefore mentioned, proceed by petition in any district court of the United States within whose jurisdiction the lands or part of the lands claimed may lie, *unless such claims come within the purview of the third section of this act.*"

The third section includes the claims "presented and passed upon by the commissioners." To sustain juris-

diction in the court it is indispensable that the same claim shall not have been presented and passed upon by the commissioners; that it was not so presented is not shown by either the pleadings or the evidence. Jurisdiction is not presumed in favor of courts of limited jurisdiction. (*Scott* v. *Sandford*, 19 How., 401.) To sustain jurisdiction the averment of jurisdiction shall be positive, and the declaration shall state expressly the fact on which jurisdiction depends. "It is not sufficient that jurisdiction may be inferred argumentatively from its averments." (*Brown* v. *King*, 8 Peters, 115.) "There are no presumptions in favor of the jurisdiction of the courts of the United States, and the facts on which it rests must in some form appear in the record of all suits prosecuted before them." (*Ex parte* Smith, 94 U. S., 455.)

The evidence in this case shows the claims were presented before some land commission. (*Vide* Rec., pp. 5, 6, 7, 9, 10, 15, 16, 18.) Whether they were presented before the commission provided by the act of 1860 or some earlier commission does not appear. But if the word "purview" be interpreted according to its ordinary signification, this case certainly comes within the scope or purview of section 3, and with such construction the record shows affirmatively that there is no jurisdiction.

The act only authorizes the court to assume jurisdiction when the parties claiming represent title to the whole of the claim. The evidence in this case, if the papers be genuine, shows the title to one undivided fourth of the land to be vested in John Chambeaux. (*Vide* Rec., p. 10.) To revest title in plaintiff's ancestors a deed from James W. Enum, marshal, by his deputy, Joseph Sierra, is shown.

(Rec., pp. 11, 12.) There is no judgment shown on which the execution by virtue of which the property was claimed to have been sold was issued. A sale by marshal on a judgment without evidence of the judgment is void.

The petition in this case is defective, because it does not, in accordance with the requirements of the first section of the act of June 22, 1860, show on file any "sworn statement of the claimants of lands supposed to be covered by their claim, according to the legal division or subdivisions made by the United States." This information is indispensable to carry out the intent of the act, as shown by the twelfth section. For, if the Government has, prior to the application for confirmation, granted lands within the limits of the claim, such lands are not to be confirmed, but, in lieu thereof, the claimant is to have other lands.

II.

There was no sufficient evidence of the genuineness of the grants. Without this evidence the grants were not admissible without proof, as there is no evidence of thirty years' possession under them. The whole evidence on the subject of the genuineness of the grants is found in the answer of F. Moreno to the third interrogatory of the claimants, which interrogatory and answer are (R., p. 21, 23):

Interrogatory third.

Do you know "anything of two grants, one to Ciriel de Morant and another to Desiderio Quina ten or twelve miles north of Pensacola? If so, look upon accompanying papers shown you, marked A and B, and hereto attached,

and state whether or not they conform to the practice in making such grants at the time. Are you familiar with the signatures of the parties whose names are attached to said papers; and, if so, state whether or not said signatures are genuine; state also from your own knowledge of such grants whether said grants shown you are such as were given to grantees in making grants?

Answer to the third interrogatory.

He answers and says: Yes; I know of these grants. I was here when they were granted in 1817. Yes, they conform to the practice. Yes, I am familiar with the signatures of the parties whose names are attached to the papers, and they are genuine. They are such as were given to grantees in making grants. (Rec., pp. 21-23.)

If this answer be taken as applicable to the papers in the record marked A and B, they do not include the deed of James W. Enum, Marshall (Rec., p. 12), nor of Cerilo de Morant (pages 12 and 13). The exhibit by certificate (Rec., p. 16) indicated that the originals were only copies found on the book of the keeper of public archives of West Florida. The same facts exist with reference to Exhibit B (Rec., p. 16, also 18 and 19). If this be true, that they were only copies as found on the book, the testimony as to genuineness is clearly insufficient. The proof in this view of the case would only be that they were genuine copies of the original which were not submitted to the witness. But if it be supposed the originals were submitted to the witness, he has not shown himself competent to testify to the genuineness of the signatures.

The first step to admit secondary evidence of writing is to identify the party who made the writing. (1 Greenleaf on Evidence, § 575.) This must be done to show that the writing to which the witness swears is that of the person authorized to make it. The witness in this case is not shown to have known the persons to whose writing he purports to testify. Neither does any one else testify to the identity. To render a witness competent to testify to the genuineness of a writing it must be shown either that he had seen the person to whose writing he testifies write, or he must have seen his writings which the writer directly or indirectly admitted to him to be genuine. (1 Greenleaf on Evidence, § 577.) The witness in this case is not shown to have ever seen the makers of the several instruments write, or to have seen writings which the parties either directly or indirectly admitted to be genuine.

The alleged grant to Desidero Quina, as appears in the record, page 17, only purports to be a copy of another corresponding paper, which purports to have been issued on the 20th of January, 1818. A copy was made on the 1st of May, 1818. There was no evidence of the loss of the original; there was no testimony as to the accuracy of the copy; hence this paper was no sufficient evidence of a grant to Quina.

III.

The grants, if genuine, are invalid, and did not warrant the decree of confirmation.

1. The treaty with Spain, concluded February 22, 1819, and ratified on the 22d of February, 1821, is found in the

Revised Statutes relating to treaties, &c., page 712. The eighth article (*vide* Appendix B) provides:

> All grants made since the 24th of January, 1818, are hereby declared and agreed to be null and void. * * * Grants made before that date were to be "confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territory had remained under the dominion of His Catholic Majesty."

The extent to which the grants whose inception commenced before the 24th of January, 1818, but were not perfected until after that date, is exhaustively discussed in the case of *The United States* vs. *Clarke* (8 Peters, 436 to 469). In the case of *Smith* vs. *United States* (10 Peters, 831) Justice Baldwin, citing that case, furnishes a brief statement of some of the principles decided in it, as follows:

> It has also been distinctly decided, in the Florida cases, that the land claimed must have been severed from the general domain of the king by some grant which gives it locality by its terms, by a reference to some description, or by a vague general grant, with an authority to locate afterwards by survey, making it definite; which grant or authority to locate must have been made before the 24th of January, 1818. That where the grant is descriptive a survey in any other place is unauthorized; and that where a survey was made of part of a descriptive grant before that time, an order or permission to survey the residue elsewhere, made afterward, is void, in contravention of the terms of the treaty and the act of Congress; it being in effect and substance a new grant, made after the power of the governor to make grants had ceased. That where the grant was specific, a

survey might be made after the time fixed by the treaty; and where the grant was vague, or contained an authority to locate, which was executed by a survey made before, it was valid.

These cases settled that where an imperfect grant is indescriptive it does not exist as a valid grant to land until it is actually located by survey, and such survey made after the 24th day of January, 1818, under an indescriptive grant, does not validate a grant and should not be confirmed.

They also established that a descriptive grant, which by survey after the 24th of January, 1818, is located on other lands than those described in the grant, should not be confirmed as to such grants. Both of the grants presented in this case purport to have been located by survey on the 6th day of March, 1818. (Rec., pp. 16, 18.) The application for the grant by Cerile de Morant describes the land as "sixteen hundred arpens of said vacant lands, twelve miles to the NW. of this place (Pensacola), on the SE. side of the land established by Mr. Manuel Goverder." (Rec., pp. 13 and 14.)

The grant is for "the sixteen hundred acres of land that he asks, * * * and that the surveyor-general proceed to the measurement and survey, drawing a figurative plan, which, with the proceedings, will be annexed to this matter." Until the same was made on this grant, by its terms no land was "severed from the domain of the king. All that was fixed by it was the locality in which the future severance was to be made by survey. No monuments were referred to which defined the boundary. Nor was the length of any side given by which the quantity of land

might be located; nor was the figure or form of the survey defined. Hence no particular land was granted, but only an executory agreement made that when survey was had the land so surveyed should be granted.

In the case of *Lilley* v. *Paschal* (2 S. & R., 400), Justice Rogers ruled, a warrant "for 300 acres of land at the foot of Muncy Hill, on the south side thereof, including the heads of Delaware Run, was a vague and loose warrant;" which in *Starr* v. *Bradford* (2 P. & W., 395), was ruled only "to give title from the time of the survey; that a descriptive warrant commences from its date; a loose warrant from the survey, and a shifted warrant from the acceptance of the survey. In *Lauman* v. *Thomas* (4 Binney, 51) it was ruled, a warrant for "300 acres on the waters of Spring Creek, within 2 or 3 miles of Nittany Mountains, was indescriptive."

In *Boyles* v. *Kelly* (10 S. and R., 216), Gibson, justice, ruled that a warrant which called for land on the north side of Black Lick was not to be regarded as a shifted warrant because it was not located on Black Lick, but was a vague or loose warrant by which title was only vested when the survey was made.

The application of Desiderio Quina of the 20th of January, 1818, is stated to be for 800 arpens "at the 12 miles northwest of this place (Pensacola), on the southeast of that which is established by Mr. Manuel Gonsalez." (Rec., p. 17.)

This is even more vague and loose than the former. It does not, as indicated in the last clause quoted, show whether it was to butt on lands of Gonsalez or not, nor

define form, fix of length of any side, nor to refer to any monuments by which its contour or location could be established.

II.

But if the grants should be determined to be strictly descriptive, they were shifted and located on different lands from those called for. The application of Morant was for land 12 miles northwest of Pensacola on the southeast side of lands of Mr. Manuel Goverder. (Rec., pp. 13, 14.) The survey was 12½ miles northwest of Pensacola, bounded on the north by lands of Manuel Gonsalez and royal lands. The lands of Goverder, the only fixed point in Morant's application, were abandoned in the survey, and by the plats submitted (pages 4 and 22) do not appear to be contiguous to the survey at any point. The only fixed point in the survey of the grant of Quina was that it was to be southeast of Mr. Manuel Gonsalez. The survey does not touch the Gonsalez survey, but by it the land is located so that the Morant survey intervenes between it and the Gonsalez land called for. (Rec., pp. 18, 4, and 22.) If, then, the grants be construed as strictly descriptive, they are shifted, and no title would accrue under them, as the survey was made after the 24th of January, 1818.

IV.

Specific performance of the alleged grant should not be decreed, on account of laches of the alleged grantees and their privies. The grants, if made, were prior to the 24th

of January, 1818. After their making the legal title to the land was transferred to the United States. On the 8th of May, 1822, the United States by statutes provided for their confirmation. (U. S. Stat., 709.) On the 3d of March, 1823, the presentations of claim was again urged, with penalty of a bar if not presented before the 1st of December, 1823. (U. S. Stat., 754.) On the 8th of February, 1827, a similar act was passed limiting the time for filing to the first of November, 1827. (U. S. Stat., 203.)

On the 23d of May, 1828, another act was passed which prescribes by its 12th section that all claims not presented within one year should be forever barred. (4 U. S. Stat., 286.) From time to time thereafter, until the act of 1860, similar legislation was had, which, with the act of 1860, extended the time until 1865. The Government was diligent, urgent on the claimants to present claims, giving ample notice, time, and opportunity. The act of 1860, which applies to these claims by the second section, provides that they shall be passed upon according to "justice and equity." No possession is shown by the alleged claimants for over forty years. Flagrant laches have existed with reference to the claims. The act of 1860 infuses no new life into the claims to be presented, but only removes the bar of prior limitations. No evidence was given to account for or excuse the negligence of the claimants.

> Courts of equity, acting on their own inherent doctrine of discouraging, for the peace of society, antiquated demands, refuse to interfere in attempts to establish a stale trust where, except, 1st, the trust is

clearly established; 2d, the facts have been fraudulently and successfully concealed by the trustee from the knowledge of the *cestui que trust*. (*Badger* v. *Badger*, 2 Wall., 87.)

It is respectfully submitted whether any court of equity would decree specific performance of a contract or order conveyance of land under such circumstances as are shown by the record in this case.

G. A. JENKS,
Solicitor-General.

APPENDIX.

A.

AN ACT for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes. (12 Stat. L., 85.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or persons, and the legal representatives of any person or persons, who claim any lands lying within the States of Florida, Louisiana, or Missouri, by virtue of grant, concession, order of survey, commission to settle, or other written evidence of title, emanating from any foreign government, bearing date prior to the cession to the United States of the territory out of which said States were formed, or during the period when any such government claimed sovereignty or had the actual possession of the district or territory in which the lands so claimed are situated, shall be, and they are hereby, authorized to make application for the confirmation of their title to the lands so claimed, in the manner following, to wit: They shall file notices in writing, together with the evidence in support of their claims, before the commissioners hereinafter designated, within whose district the lands claimed may be situated, together with a brief abstract of the title of the claimant, and copies of the plats of survey thereof, whenever such surveys have been made and are within the possession of the claimant, and accompanied with a sworn statement by the claimant of the lands supposed to be covered by his claim, according to the

legal divisions and subdivisions of the surveys made by the United States, if the land claimed is included in any surveys so made; and the said notices, evidence, and the decisions of the commissioners thereon, shall be recorded in a book kept for that purpose, a transcript of which shall, from time to time, be transmitted to the Commissioner of the General Land Office.

SEC. 2. *And be it further enacted*, That the registers and receivers of the several land offices in the States of Florida and Louisiana, within their respective land districts, and the recorder of land titles for the city of Saint Louis, for the State of Missouri, and their successors in office, shall be, and they are hereby, appointed commissioners to hear and decide, under such instructions as may be prescribed by the Commissioner of the General Land Office in conformity with this act, and according to justice and equity and the principles hereinafter established, in a summary manner, all matters respecting such claims within the districts aforesaid as come within the provisions of this act; they shall have power to administer oaths, compel the attendance of, and examine witnesses, demand and obtain from the proper officers all public records in which grants of land, warrants, orders of survey, or other evidence of claims to land derived from any foreign government may have been recorded, and shall make a report to the Commissioner of the General Land Office on the claims so presented to them for decision, dividing said claims into separate classes in the manner hereinafter provided, and giving their opinion whether such claims ought to be confirmed or rejected.

SEC. 3. *And be it further enacted*, That the claims so presented and passed upon by the commissioners, as aforesaid, shall be by them divided in their report into three distinct classes, as follows, viz:

No. 1 shall contain all claims which, in their opinion, ought to be confirmed, where the lands claimed have been in possession and cultivation by the private claimants, or

those under whom they derived title, for a period of at least twenty years preceding the date of filing the claim, by virtue of some grant, concession, or order of survey, permission to settle, or other written evidence of title emanating from some foreign government which held or claimed sovereignty or jurisdiction over the territory in which the lands claimed are situated, and where the title emanating from such foreign government bears date anterior to the cession of said territory to the United States.

No. 2 shall contain all claims which, in their opinion, ought to be confirmed, where the lands are claimed under written evidence of title, as above provided in class No. 1, but where there has been no actual possession and cultivation of the land claimed for a period of at least twenty years prior to the filing of the claim.

No. 3 shall contain all claims which, in their opinion, ought to be rejected, whether from defect of proof, suspicion of fraud based on probable ground, uncertainty of location, vagueness of description, or any other cause sufficient, in their opinion, to justify such rejection: *Provided*, That in no case shall such commissioners embrace in said classes No. 1 and No. 2 any claim which has been heretofore presented for confirmation before any board of commissioners, or other public officers acting under authority of Congress, and rejected as being fraudulent, or procured or maintained by fraudulent or improper means; nor shall any such claim be received or considered by the commissioners which has been already twice rejected on the merits by previous boards.

SEC. 4. *And be it further enacted*, That whenever the said Commissioner shall approve the report of the commissioners in cases embraced in classes No. 1 or No. 2, he shall report the same to Congress for its action; and whenever the said Commissioner shall approve the report in cases embraced in class No. 3, the rejection of the claim so acted on shall be final and conclusive, and the land

embraced within the claim shall be considered and treated as other public lands belonging to the United States.

SEC. 5. *And be it further enacted*, That all claims comprehended within any of the three classes aforesaid, on which there shall be disapproval by the Commissioner of the report made by the boards of commissioners aforesaid, shall be reported to Congress for its action and final decision thereon.

SEC. 6. *And be it further enacted*, That whenever it shall appear that lands claimed, and the title to which may be confirmed under the provisions of this act, have been sold in whole or in part by the United States prior to such confirmation, or where the surveyor-general of the district shall ascertain that the same cannot be surveyed and located, the party in whose favor the title is confirmed shall have the right to enter upon any of the public lands of the United States a quantity of land equal in extent to that sold by the Government: *Provided*, That said entry be made only on lands subject to private entry at one dollar and twenty-five cents per acre, and as far as may be possible in legal divisions and subdivisions, according to the surveys made by the United States.

SEC. 7. *And be it further enacted*, That whenever any claim is presented for confirmation under the provisions of this act, which has heretofore been presented before any board of commissioners under authority of Congress, the facts reported as proven by the former board shall be taken as true *prima facia*, and the evidence offered before such former board, and remaining of record, shall be admitted on the examination of the claims made under the provisions of this act.

SEC. 8. *And be it further enacted*, That no land claimed under the provisions of this act shall be offered for sale, or otherwise disposed of by the officers of the United States, until the final decision shall be made on the validity of such claim; and in no case where land is possessed or cultivated by private persons shall it be entered upon or

surveyed as public land or offered for sale, without previous notice given to those in possession, requiring them to present their claims for confirmation; and if within sixty days from the date of such notice such claim shall not have been filed, then the proper officers of the Government may proceed to the survey or sale of such lands as public lands, without prejudice, however, to the legal rights of the possessor or claimant, if any he have.

SEC. 9. *And be it further enacted*, That before the boards of commissioners shall be required to receive for record any notice, paper, evidence of title, or testimony in support of any claim, the claimant shall pay to said board the sum of twenty-five cents for every hundred words required to be recorded, which shall be in full consideration for the recording and the transcript required to be forwarded to the Commissioner of the General Land Office.

SEC. 10. *And be it further enacted*, That at the commencement of each regular session of Congress it shall be the duty of the Commissioner of the General Land Office to make report of all that has been done under the provisions of this act by the several officers charged with its execution.

SEC. 11. *And be it further enacted*, That in any case of such a claim to lands as is hereinbefore in the first section of this act mentioned, where the lands claimed have not been in possession of and cultivated by the original claimant or claimants, or those holding title under him or them, for the period of twenty years aforesaid, and where such lands are claimed by complete grant or concession, or order of survey duly executed, or by other mode of investiture of the title thereto in the original claimant or claimants, by separation thereof from the mass of the public domain, either by actual survey or definition of fixed natural and ascertainable boundaries or initial points, courses and distances, by the competent authority, prior to the cession to the United States of the territory in which said lands were included, or where

such title was created and perfected during the period while the foreign governments from which it emanated claimed sovereignty over or had the actual possession of such territory, the person or persons, his, her, or their heirs, devisees, legal representatives, or grantees, so claiming such lands, may, at their option, instead of submitting their claim to the officer or officers hereinbefore mentioned, proceed by petition in any district court of the United States within whose jurisdiction the lands or any part of the lands claimed may lie, unless such claim comes within the purview of the third section of this act; to which petition the United States shall be made defendant, and it shall be verified by the oath of the party or parties, and conform to the provisions of section one of this act, and to the practice of such court in chancery, and the attorney of the United States for such district shall defend against the same for the United States; and the court shall decide the claim valid or invalid according to the principles established in this act, and decree accordingly. If the decree be against the United States, an appeal shall be entered to the Supreme Court of the United States; and if it be against the claimant or claimants, he or they may take an appeal directly to that court, as of right and course, without affidavit or security other than for costs; and the same shall be adjudged *de novo* in the Supreme Court as in other cases of appeals thereto in chancery, and as equity and justice and the principles aforesaid may require; which decision shall be final, and patent shall thereupon issue, if the claim be adjudged valid, for so much of the lands claimed as remain unsold; and for so much as may have been sold, the provisions of section 6 of this act shall apply and be in force.

SEC. 12. *And be it further enacted*, That this act shall be and remain in force during the term of five years, unless sooner repealed by Congress; and all claims presented or sued upon, according to the provisions of this act,

within the said term of five years, may be prosecuted to final determination and decision, notwithstanding the said term of five years may have expired before such final determination and decision.

Approved June 22, 1860.

B.

ARTICLE VIII, treaty with Spain, dated 22d February, 1819, proclaimed February 22, 1820.

All the grants of land made before the 24th of January, 1818, by His Catholic Majesty, or by his lawful authorities, in the said territories ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of His Catholic Majesty for the cession of the Floridas was made, are hereby declared and agreed to be null and void.

123-335

JAMES H. McKENNEY
CLERK

Supreme Court of the United States

OCTOBER TERM 1896.

No. 306.

THE UNITED STATES, Appellant,

vs.

MATHILDE DE MORANT et al.

BRIEF FOR APPELLEES.

ROB'T B. LINES,
Counsel.

THOMAS McGILL & Co., Law Printers, Washington, D. C

IN THE

Supreme Court of the United States.

OCTOBER TERM 1886.

THE UNITED STATES, Appellants,
vs.
MATHILDE DE MORANT *et al.* } No. 306.

Statement of Case.

This is a suit brought in the U. S. District Court for the Northern District of Florida under authority of acts of Congress of June 22, 1860, (12 Stats., 85,) and March 2, 1867, (14 Stats., 544,) by the heirs of Cirilo de Morant, Laurent Millaudon, and Louis Docminel de Morant, to obtain a decree confirming their title to two grants of land made October 8, 1817, and January 20, 1818, respectively, by the King of Spain, through Don José Masot, Governor and Sub-Delegate of the Royal Treasury.

The grant to Cirilo de Morant of 1,600 arpents, with order of possession and survey, appears on page 15 of the Record; that to Desiderio Quina of 800 arpents appears on page 17. The returns of the Surveyor-General (Pedro Reggio), both dated March 6, 1818, are on pages 15, 16, 17, and 18, and the plats between pages 4 and 5. A certified plat, according to U. S. surveys, is between pages 22 and 23.

By deed acknowledged before the Military Governor and Secretary at Pensacola October 29, 1818, (Record,

pp. 18 and 19,) Quina conveyed his 800 arpents to Cirilo de Morant, who thus became the owner of both tracts, aggregating 2,400 arpents.

By deed of June 14, 1821, Morant conveyed an undivided three-fourths interest in the 1,600 arpents to John Chabaux, Laurence Millaudon & Co., and by deed of November 9, 1818, a similar interest in the 800 arpents to John Chabaux, Laurence Millaudon, and Louis Docminel de Morant. (Record, pp. 10, 11, 12, and 13.)

By deed dated August 3, 1835, reciting judgment and execution in favor of Laurence Millaudon in a suit against John Chabaux, the marshal of the western district of Florida sold to the former the undivided interest of the latter in both grants. (Record, p. 11.) Millaudon thus became the owner of an undivided half of each grant, leaving to Cirilo and Docminel de Morant each a quarter interest.

The petition was filed in the lower court November 22, 1869, and by stipulation, found on page 20 of the record, the District Attorney admitted the death of the above-named parties, and that the petitioners are their legal representatives.

The cause being referred to a commissioner, Francisco Moreno testified that he had resided in Pensacola since 1804; that the signatures to the grants were genuine, and that they were in conformity with the rules and practice, as he knew from having held the office of contador, in which the regulations were kept. Also that the grantees went into possession between 1818 and 1820; fenced and built houses in which he had been a hundred times.

Peter Gonzalez testified that he had resided in and near Pensacola since 1810. His brother had a contract to build a house on each grant, and employed witness, whose father's house was three miles from the grants. The houses were there when Jackson came, and the lands were fenced.

No testimony was taken by the respondents, and a decree was entered March 20, 1880, (Record, pp. 24, 25) confirming the grants.

Brief for Appellees.

Appellants assign as error—

I.

That the District Court had no jurisdiction—

(A) Because the record does not show that the claim did not "come within the purview of section 3" of the act of 1860.

In Scull *v.* United States, 8 Otto, 410, this court says this language of section 11 of the statute is intended to exclude from the courts claims specified in the proviso to section 3, *i. e.*, those which have been twice rejected on their merits, or rejected for fraud by prior boards of commissioners.

The record, pages 15, 16, and 18, shows both claims to have been rejected by a board of which Joseph E. Caro was secretary.

The American State papers, of which the court takes notice, (16 Pet., 25; 19 How., 334; 22 How., 405,) show that Joseph E. Caro was secretary of the old Board, constituted under acts of 1822 and 1823. (Duff Green's Ed., vol. IV, Pub. Lands, p. 154.) The rejection of these claims in the report of the Commissioners of November 12, 1824, is shown (at page 116 of the same volume) to have been because there was not sufficient evidence of cultivation. It is clear that this rejection was not for fraud, and if there was a second rejection by another board, for fraud or other cause, it would appear in the expediente itself or in the report of such board, which the courts would also notice judicially.

(B) It is objected that the claimants do not represent the

whole title, as there is no evidence of the judgment under which the sale to Millaudon of Chabaux one-quarter interest was made by the marshal. This objection, if well taken, would not go to the jurisdiction, as a decree under the act of 1860 might be made for the undivided moieties represented.

United States *v.* Watkins, 7 Otto, 219.

If one claiming as assignee does not prove the assignment, the confirmation may be made to the legal representatives of the original grantee.

United States *v.* Patterson, 15 How., 10.

But the objection is not well taken. Sales of real estate under judgment and execution are authorized and regulated by statute. The deed need not always follow the statute. (Moorehead *v.* Pearce, 2 Yeates, Pa., 456.) But the territorial act of Florida of February 17, 1833, (two years before the deed to Millaudon was executed) prescribed no form of sheriff's deed. In such case the deed is presumed valid, especially after the lapse of twenty years.

Drouet *v.* Rice, 2 Rob., La., 374.

Omnia præsumuntur rité esse acta.

Where an official act has been done it will be presumed that preliminary acts necessary to give it validity have been performed.

Rex *v.* Whiston, 4 A. & E., 607.
Rex *v.* Broadhempston, 28 L. J. N. S., 18.
Gosset *v.* Howard, 10 Q. B., 411.
Bank of United States *v.* Dandridge, 12 Wheat., 64.
Carpenter *v.* Rannels, 19 Wall., 138.
Clements *v.* Macheboeuf, 2 Otto, 418.
Keeley *v.* Sanders, 9 Otto, 447.

The deed from the marshal to Millaudon recites the facts

of judgment, execution, levy, and sale. Such recitals are *prima facie* evidence.

Ellis *v.* Smith, 10 Ga., 253.
Perkins *v.* Dibble, 10 Ohio, 433.
Hardin *v.* Cheek, 3 Jones (N. C.) L., 135.
Stephenson *v.* Thompson, 13 Ill., 136.
White *v.* Chestnut, 11 Humph., 79.

(c) The third objection to the jurisdiction is that the petition does not show on file any "sworn statement of the claimants of lands supposed to be covered by their claim, according to the legal division or subdivisions made by the United States," such as the first section of the act requires to accompany notices of claims filed before the Commissioners. The argument appears to be that as the eleventh section of the act requires the petition to "conform to the provisions of section one" it must embrace such a statement. But there is just as much reason to claim that it must embrace all the "evidence" which section 1 requires to accompany the notices. Such cannot be the meaning of section 11, for it provides that the petition shall "conform to the practice of such court in chancery," and no chancery practice requires or permits such jumbling of pleadings and evidence. The expression "conform to the provisions of section 1," like the expression "within the purview of section 3," is not very clear. But at best the language is merely directory. The lack of strict compliance, in a case where the record shows a substantial right, does not defeat the intent of the law, and should not be held to affect the jurisdiction.

The map of the grants, according to the United States surveys, is in the Record, (page 22,) and it is difficult to see how its absence from the pleadings can be important to the case under the twelfth section of the act, as claimed in appellant's brief, or under any other section. The decree, if affirmed, determines only the validity of these grants,

and patents or scrip will be afterwards issued by the Land Office under the sixth section, according to the amount of lands which may remain unsold at the time of confirmation.

On the whole question it is submitted that if, by reason of defects in the petition or record, jurisdiction is not clearly shown, the court will remand the case with leave to amend the proceedings.

Cervantes *v.* United States, 16 How., 619.

II.

The second assignment of error is based on alleged insufficiency of proof of the genuineness of the grants. The copies of the expedientes are certified by the keeper of the public archives of West Florida to be correct and taken from his archives. (Record, pp. 16 and 18.)

The original grants seem to have been submitted to the witness Francisco Moreno, and the question asked him as to the genuineness of the signatures; (Record, p. 21); and in his answer (Record, p. 23) he testified that they were genuine. But even if this be regarded as slight evidence, this court has frequently decided that where the preliminary papers appear, and the authenticity of grants is not questioned in the court below, it will not be here.

United States *v.* Delespine, 15 Pet., 319.
United States *v.* Auguisola, 1 Wall., 352.
United States *v.* Yorba, 1 Wall., 312.

No exception to these grants and no evidence against them was taken below in this case.

III.

The third assignment of error is grounded on the alleged invalidity of the grants.

It is charged—

(A) That they were indescriptive—were not located by survey until March, 1818, and not therefore protected by

the eighth article of the treaty of 1819 validating grants made before January 24, 1818. Conceding this for the moment, it is no obstacle to the affirmance of the decree below. The act of 1860, as was held in United States *v.* Lynde's Heirs, (11 Wall., 632,) was passed for the purpose, among others, of confirming grants made after the territories in question had been ceded to the United States, but while the Government from which such grants emanated, in the words of section 11, "claimed sovereignty over *or had the actual possession of, such territory.*" It is matter of history that possession of the Floridas was not transferred until July, 1821. (House Mis. Doc. 45, part 4, 47th Cong., 2d Sess.; "The public domain," pp. 116–119; Act May 26, 1824, 4 Statutes, 47.)

But the grants were valid under the treaty of cession itself. In United States *v.* Acosta (1 How., 24) a grant exactly like the present, *i. e.*, indescriptive, and made before January 24, 1818, with an order to the Surveyor-General to select and survey the lands, was held to be protected by the treaty, although the surveys were not made until 1820; and this case but followed those of United States *v.* Clarke & Atkinson (16 Pet., 228) and United States *v.* Sibbald (10 Pet., 321).

(B) It is said that if the grants were strictly descriptive they were shifted by the survey to other lands than those called for. But it is admitted, as charged in the preceding specification, that they were not strictly descriptive. So far as they are so, however, they accord with the survey. The petition of Morant, at pages 13 and 14 of the record, is a translation of the original at pages 7 and 8. The translation is correct, except as to one name. In the original (page 8) it is Manuel "Gonzales," and the translator (or printer) has made it Goverder. But the translation of the return of the Surveyor-General (pp. 15, 16) gives the name correctly to correspond with the original. (pp. 9, 10.) The maps at pages 4 and 9 show the survey to have been, con-

formably to the petition, "on the southeast side of the land established by Mr. Manuel Gonzales."

But the expression "*por la parte del S. E.*" does not necessarily mean "adjoining on the southeast," but only "in a southeasterly direction from;" so that the grant to Quina, in the original of which (p. 4) the same expression is used, was also correctly located with reference to the lands of Gonzales, if located on royal lands anywhere to the southeast. It is to be noted that the Morant grant was selected and allowed before that of Quina, and it was natural that the Surveyor-General, although making returns of both surveys on the same day, should locate that of Morant nearer to the lands of Gonzales.

IV.

As to the defense of *laches*, it is hardly necessary to argue that, however negligent the claimants might have been in pursuing former remedies, that negligence has been condoned in the acts of 1860 and 1867. But there has been no laches on the part of claimants. As above shown, their claims were promptly presented to the Commissioners under the very first act—that of 1822. They were rejected in 1824, apparently upon the mistaken theory that they were conditional upon cultivation, and that the condition had not been performed. *After that rejection the claimants were entirely without a remedy until the act of* 1860 *was passed.* They could not claim as actual settlers and cultivators "at and before the period of cession," as required in the acts of 1823 and 1824. The acts of 1825, 1827, 1828, and 1830 (the two latter of which admitted claimants to the courts) provided only for claims not theretofore passed upon.

No board of commissioners, no court, had jurisdiction of these claims between 1824 and 1860. Congress saw fit, by the act of 1867, to excuse claimants who did not proceed during the war. And by act of June 10, 1872, (17

Stats., 378,) it further extended for three years the time for filing claims under the act of 1860. Are claimants under these late acts to be defeated here on the ground of laches? If so, there is not much use of an attempt at remedial legislation by Congress in any sort of a case.

The decree below should be affirmed, or, preferably, the cause should be remanded with directions to enter a decree specifying the quantities of land and scrip, respectively, to which claimants are entitled at the date thereof.

ROBERT B. LINES,
For the Heirs of Laurent Millaudon.

123-335

No. 306. October Term, 1886.

Supreme Court of the United States.

The United States,
Appellants,

vs.

Mathilde de Morant *et al.*

Brief for Appellees.

WAYNE MacVEAGH,
Of Counsel for Appellees.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

The United States

vs.

Morant et al.

BRIEF FOR APPELLEES.

The action was brought in the court below by the heirs of Cerilo de Morant, Laurent Millandon, and Louis Doquiminel de Morant against the United States, to recover two tracts of land ten or twelve miles north-east of Pensacola, Florida, claimed under grants from the government of Spain before Florida was ceded to the United States.

The petitioners came into court under section 11 of act of Congress of June 22d, 1860 (12 U. S. Statutes at Large, page 87), which provides, *inter alia*, for the adjudication of land claimed by private persons in Florida. The time for presenting the claims was extended by act of March 2d, 1867, for three years from that date (14 U. S. Stat. at Large, page 544). The petition was filed November 22d, 1869. It prayed:—

First.—That sixteen hundred arpents of land, granted by the Spanish authorities to Cerilo de Morant, October 8th, 1817, should be adjudged to the heirs of Morant, Millandon and Doquiminel de Morant.

Second.—That eight hundred arpents of land, granted by the Spanish authorities to D. Quina, January 20th, 1818, should be adjudged to said heirs.

It was first of all agreed of record, by both sides to the controversy, that the petitioners are the heirs of Morant, Doquiminel de Morant, and Millandon. (Record, page 20)

The titles were then proven as follows:—

To first tract of sixteen hundred arpents:

1. Grant of Spanish authorities to Cerilo de Morant, October 8th, 1817.

(Certified translation of original records. Record, pages 13–16.)

2. Deed Cerilo de Morant to John Chabeaux, Laurence Millandon and Company, June 14th, 1821, reserving one undivided fourth.

(Certified from records. Record, pages 10–11.)

3. Deed United States Marshal to Laurence Millandon, for, *inter alia*, John Chabeaux's one-fourth interest in the above tract, August 3d, 1835.

(Certified from records. Record, pages 11–12.)

4. Depositions of Francisco Moreno and Peter Gonzalez showing that the original grant to Cerilo de Morant was regular and conformed to Spanish practice, and that the grantee went regularly into possession under it.

(Record, pages 21–24.)

To second tract of eight hundred arpents:

1. Grant of Spanish authorities to D. Quina.

(January 20th, 1818. Record, pages 16–17.)

2. Deed D. Quina to Cerilo de Morant above tract of land, October 29th, 1818.

(Record, pages 18–19.)

3. Deed Cerilo de Morant to John Chabeaux, Laurence Millandon and Louis Doquiminel de Morant, November 9th, 1818, six hundred arpents of the eight hundred arpents purchased from D. Quina.

(Record, pages 12 and 13.)

4. Deed, United States Marshal to Laurence Millandon, for, *inter alia*, Chabeaux's, one-fourth interest in the above tract, August 3d, 1835.

(Record, pages 11 and 12.)

5. Depositions of Francisco Moreno and Peter Gonzalez as to the regularity of the above grant.

(Record, pages 21–24.)

From the above it appears that Cerilo de Morant remained the owner in fee of one undivided fourth part of each of the above tracts.

Laurence Millandon became the owner in fee of two undivided fourths of each of the tracts.

Louis Doquiminel de Morant became the owner in fee of one undivided fourth part of each of the tracts.

All the conditions contained in the original grants were duly complied with, and the grants themselves were shown to be regular by the testimony of the witnesses called for the petitioners.

The appellants have filed three specifications of error, the arguments on which will be considered in their order.

First Specification.—*Want of Jurisdiction.*

(*a.*) Because the record does not show that the claim did not come within the purview of section 3 of the act of June 22d, 1860.

Answer.—It is contended by appellants that there is no jurisdiction in the District Courts given by this act, unless the claim had not been presented and passed upon by the Commissioners referred to in the third section. The word "purview" in the eleventh section of the act is evidently a misprint for "proviso." This can be made plain by a consideration of the purpose of the act of 1860. It was passed, as its title states, for the *final* adjustment of land claims. The claims need not have been presented for the first time before the authorities constituted by the act. The proviso to section 3 of the act contemplates the presentation to the Commissioners of Claims previously rejected by officers of the United States, and excludes from allowance such claims as had previously been rejected as fraudulent, or twice rejected on the merits. Two jurisdictions were created by the act before which land claims could be asserted, the Commissioners and the District Courts. The option was given to invoke the one jurisdiction or the other; and the only thing to indicate that these jurisdictions were intended to be exclusive, is found in the words

of the eleventh section: the person or persons, &c., may at their option, *instead of submitting their claim to the officer or officers hereinbefore mentioned*, proceed by petition in any District Court of the United States within whose jurisdiction the lands or any part of the lands claimed may lie." If the words recited be held to indicate a jurisdiction in the District Courts only in case the claim had not been presented before the Commissioners, it is tautological to read the succeeding words thus: "unless such claim comes within the *purview* of the third section of the act." Tautology is not to be presumed in statutes.

But there is no good reason for interpreting the statute as definitely excluding the jurisdiction of the District Court should the claim happen to have been presented before the Commissioners. The word "instead" as used here implies a choice of jurisdictions, but does not itself limit the jurisdiction of the District Courts in these cases to claims not presented before the Commissioners. If by mistake a claim should happen to have been presented to the Commissioners and to have been withdrawn from them without being followed up, it is submitted that the jurisdiction of the District Courts could be invoked.

The act of 1860 is unsymmetrical unless the words "unless such claim comes within the *purview* of the third section of this act" be read "unless such claim comes within the *proviso* of the third section of this act."

The third section of the act gives to the Commissioners the power and makes it their duty to recommend for approval all claims which in their opinion ought to be confirmed, provided "that in no case shall such Commissioners" recommend for approval "any claim which has been heretofore presented for confirmation before any Board of Commissioners, or other public officers acting under authority of Congress, and rejected as being fraudulent, or procured or maintained by fraudulent or improper means; nor shall any such claim be received or considered by the Commissioners which has been already twice rejected on the merits by previous Boards." The early portion of the third division of the section had given

them the power and made it their duty to recommend for rejection all claims which in their opinion ought to be rejected.

We would naturally expect to find that if the courts instead of the Commissioners should be asked to express their opinion as to the validity or invalidity of claims, they should be subject to the same limitations as to allowance of claims as the Commissioners, namely to the proviso in the third section of the act, while they should be free to allow or reject the claims according to their opinion. Reading the disputed phrase according to our contention, we have the courts so limited and only so limited in their powers. Reading it according to the contention of the appellants, we have an irrelevant inquiry introduced, namely, what is the *purview* of section 3 of the act. Draftsmen of acts who are at all precise in the use of language would scarcely have used the word "purview" had they intended the excepting clause in section 11 to refer to everything contained in section 3.

Moreover it must be noticed, and is perhaps conclusive in this connection, that the third section of the act has to do only with instructing the Commissioners as to the method of reporting the claims presented to them as directed by sections 1 and 2 of the act.

The scope of the enactment of the section is contained in the opening paragraph: "And be it further enacted, That the claims *so* presented and passed upon by the Commissioners *as aforesaid* shall be by them divided in their report into three distinct clauses, as follows, viz.:" Had it been intended specifically to limit the jurisdiction of the District Courts to cases not presented and passed upon by the Commissioners, the limitation in the eleventh section would have referred to the sections of the act which provide for the submission of claims to the Commissioners and their determination of them, namely, to the first and second sections, not to the third section. The words "unless such claim comes within the *purview of the first and second sections of this act*," would have carried a meaning with them. The words *unless such claim comes within the purview of the third section of this act*" are meaningless.

The excepting phrase of the eleventh section is therefore

intelligible only by substituting "proviso" for "purview." With this change the whole act becomes intelligible and symmetrical.

With this reading of the phrase, "unless such claim come within the purview (proviso) of the third section of this act," it is not indispensable, as asserted by appellants, that the same claims shall not have been presented and passed upon by the Commissioners. The District Court's jurisdiction is therefore limited only in this, that that court cannot take cognizance of claims previously rejected as fraudulent or twice rejected on their merits. But in the absence of evidence to the contrary, fraud or a previous rejection of the claim on the ground of fraud cannot be presumed. And the record affirmatively shows that if the claim was ever rejected on the merits it was rejected but once. The jurisdiction of the District Court is thus apparent.

(*b.*) It is next objected that the claimants do not represent the whole title to the land claimed, and therefore the court has no jurisdiction.

Answer.—It nowhere appears in the act that the claimants must represent the whole of the title. All that is necessary in this respect is that the parties should claim "lands."

But the claimants do in fact represent the whole title. The sale of the interest of Chabeaux to Millandon was upon a judgment duly obtained against the executor of Chabeaux in the Superior Court for the Western District of Florida, as fully recited in the Marshal's deed (Record, page 11.) The sale of his interest was therefore good.

(*c.*) The contention next is that the petition is defective because it does not show on file "any sworn statement of the claimants of lands supposed to be covered by their claim, according to the legal divisions and subdivisions made by the United States."

Answer.—Section 11 only requires that the petition shall be verified by the oath of the party or parties, *and conform to the provisions of section 1 of this act.* This latter evidently means that as far as possible the petition shall, in the nature of its contents, follow the claims submitted before the Com-

missioners as to the recital of evidence, abstract of titles and copies of the plots of survey. There is nothing to indicate that it is made obligatory that the petition should recite, as the claim before the Commissioners must be accompanied with, the sworn statement referred to. Section 11 of the act, which is the only section to be followed as a guide in the matter of jurisdiction, merely prescribes generally the nature of the petition, without prescribing by what, if anything, it shall be accompanied by way of evidence. Nothing can be presumed to be required that is not expressly stated.

SECOND SPECIFICATION.—There was no sufficient evidence that the alleged grants were genuine.

Answer.—The record seems to show (page 21) that the originals, not copies of the original grants, were submitted to the witness Morant, and by him identified as genuine (page 23). These were ancient documents, more than thirty years old. Ancient documents prove themselves upon evidence being given of their having come from the proper custody, or *having been acted on.* (1 Greenleaf on Evidence, section 570.) It is not necessary that possession under them should have continued for thirty years. (*Id.*, sections 142 and 144, note.) It was proven, however, that the grantees went into possession under the deeds and acted as owners.

Fourth interrogatory, page 21. Do you know whether the grantees Morant and Quina occupied, cleared and settled and cultivated the lands granted to them respectively? If you do, state same as to each of said grantees, mentioning time when the lands were built upon, as near as you can remember.

Answer to fourth interrogatory, page 23. I know that they went into possession and cleared, fenced and built houses upon the grant between the years 1818 and 1820.

To the same effect is the testimony of Gonzalez. But even supposing that the grants did not prove themselves as ancient documents upon some proof being given of possession under them, it is submitted the evidence as to genuineness given was sufficient to make out a *prima facie* case. It is for the defendant denying genuineness of a deed as testified to by a

witness to test the source of his knowledge by proper cross-examination. A failure to do this at the proper time is fatal to his objections to proof of genuineness. Moody *vs.* Powell, 17 Pick., 490.

But independent of the proof of genuineness by the witnesses called, the keeper of the public archives of West Florida furnished certified copies of the grants.

(Record, pages 16–18.) The production of an office copy of a deed is *prima facie* evidence of the execution of the deed by the person whose deed it purports to be, and of its delivery to the grantee, of its due acknowledgment, and that the grantor was seized of the land described in the deed.

Chamberlain *vs.* Bradley, 101 Mass., 190;

1 Greenleaf on Evidence, section 484, note.

This proof by office copies establish the genuineness of all the papers offered in evidence, including the Marshal's deed (page 12), and that of Cerilo de Morant (pages 12 and 13), to which particular objection is made.

The same may be said of the grant to Quina, which is assailed as being only a copy of an original paper.

The grantors, Masot, Sausa and Cerallos, certified to the accuracy of the copy, and the keeper of the archives established the genuineness of the certificate and of the papers connected therewith by his office copy.

THIRD SPECIFICATION.—The grants, if genuine, were void.

(*a.*) They were indescriptive.

Answer.—The contention seems to be that the grants were vague, and not therefore valid until the surveys, and these having been made after January 24th, 1818, no title passed to the grantees. But it has been decided by this court that as to individual rights the treaty with Spain is to be considered as dated at its ratification. (United States *vs.* Sibbald, 10 Pet., 313.) The surveys in this case were made in March, 1818. The treaty was not ratified till February 19th, 1821. (8 U. S. Stat. at Large, 252.) The power to survey under a grant or concession made before January 24th, 1818, existed up to the change of flags.

United States *vs.* Clarke, 16 Pet., 231;

United States *vs.* Acosta, 1 Howard, 24;
United States *vs.* Levi, 8 Pet., 479;
U. S. *vs.* Hernandez, *Id.*, 485.

The change of flags did not take place till long after the surveys.

Even therefore if the grants be considered vague and indescriptive, and only dating from the surveys, they are still valid.

But the grants were fully descriptive and quite as definite as many other grants which have been confirmed by this court.

The description of the Morant lands as given in the application was:

The concession of sixteen hundred arpents of said vacant lands, twelve miles to the north-west of this place, on the south-east side of the land established by Mr. Manuel Goverder.

The description of the Quina lands was:

Eight hundred arpents, twelve miles north-west of this place (Pensacola), on the south-east of that which is established by Mr. Manuel Gonsalez.

These descriptions will compare very favorably as to definiteness with the following descriptions of grants which have been approved by this court:—

United States vs. *Richard*, 8 Pet., 470. A license to construct a water saw-mill, on the creek known by the name of Pottsburg, bounded by the lands of Strawberry Hill, and this tract not being sufficient, I grant him the equivalent quantity in Cedar Swamp, about a mile east of McQueen's Mill.

In this case the concession was made in 1817, while the surveys were not made till 1824.

United States vs. *Huertas*, *Id.*, 488. Five thousand acres, at a place called Tocoy, five miles above Picolata, and bounded on the west by the river St. John's.

The surveys were made September 19th, 1818, and May 31st, 1820.

United States vs. *Gomez*, *Id.*, 477. Twelve thousand acres of land on Jupiter Island, in East Florida, for which a concession was made by Governor Estrada, on the sixteenth day of July, 1815.

United States vs. *Fleming*, *Id.*, 478. Twenty thousand acres of land, situated on the banks of the river St. Sebastian, to the south of Indian river, between the eastern coast of Florida and the river St. John's.

See also U. S *vs.* Levi, Id., 479.

United States vs. *Acosta*, 1 Howard, 24. The petitioner described the lands applied for thus indefinitely: "A grant in property of eight thousand acres; but as he was ignorant of the lands that were vacant, and desirous to avoid interference and dissensions with any person, he further prayed his Excellency would be pleased to grant them at the places where the Surveyor-General might survey them as vacant lands." This petition was filed in 1816. Four plats were subsequently surveyed, two of which were not surveyed till after June 24th, 1818. Said this court: "*Although there is no description of any place where the land granted shall be located, in the Governor's decree, still it was binding so far as it went. The Surveyor-General was ordered to survey the lands solicited.*" He subsequently surveyed them and the grants were declared valid.

This case rules ours. The record shows that the selection of the tracts was largely to be made by the surveyor, and that on the 2d of March, 1818, he duly surveyed them according to the directions of the grants. The grants therefore became valid.

(*b.*) The grants were not located on the land called for in the grants.

Answer.—The only ground for this objection as to the Morant tract is that the application was for land twelve miles north-west of Pensacola, while the survey was of land twelve and one-half miles north-west of Pensacola. This discrepancy as to distance is corrected by the correspondence of the grant and the survey as to the location of the lands relative to the lands of Gonsalez or Goverder, who are evidently the same person. The mistake in the name Gonsalez, transcribed as Goverder in the application, is doubtless that of a copyist. This appears from the identity of the grant, and the survey otherwise. The objection to the Quina grant is that in the application it is stated as south-east of land of Manuel Gon-

salez, while the survey makes it south-east of this land but with Morant's land intervening. This is a discrepancy that is no discrepancy. Especially so since the very directions of the Spanish authorities, under which the grant and survey were made, required that the surveyor should select the lands out of the vacant royal lands *at some point south-east of lands of Gonsalez.*

(*c.*) The claim is barred by laches.

Answer.—A sufficient answer to this is that the Congress of the United States passed the acts of 1860 and 1867 expressly to cure defects in land titles or in remedies for their enforcement arising from previous neglect to assert them.

It is idle to claim an equity in favor of the United States arising from alleged laches of a *bona fide* grantee of land when the statutes themselves not only repudiate the equity, but arm the holder of the legal title with the legal means for its assertion.

It is therefore plain that the various grounds of objection to the title as asserted by the appellees must fall, and the decree of the court below should be affirmed.

WAYNE MacVEAGH,
Of Counsel for Appellees.